

Adopted	Rejected
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COMMITTEE REPORT

YES:	7
NO:	2

MR. SPEAKER:

*Your Committee on Financial Institutions, to which was referred Senate Bill 89, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert:
- 3 "SECTION 1. IC 4-6-12-3.5 IS ADDED TO THE INDIANA CODE
- 4 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
- 5 UPON PASSAGE]: **Sec. 3.5. (a) Not later than July 1, 2008, the unit**
- 6 **shall establish a toll free telephone number to receive calls from**
- 7 **persons having information about suspected fraudulent:**
- 8 **(1) mortgage lending practices;**
- 9 **(2) real estate appraisals; or**
- 10 **(3) other practices;**
- 11 **involving residential real estate transactions.**
- 12 **(b) The toll free telephone number required by this section shall**
- 13 **be staffed by:**
- 14 **(1) employees or investigators of the unit who have knowledge**
- 15 **of the laws concerning:**
- 16 **(A) mortgage lending practices;**

- 1 **(B) real estate appraisals; or**
- 2 **(C) other practices;**
- 3 **involving residential real estate transactions;**
- 4 **(2) representatives of any of the entities described in section**
- 5 **4(a)(8) through 4(a)(10) of this chapter who have knowledge**
- 6 **of the laws concerning:**
 - 7 **(A) mortgage lending practices;**
 - 8 **(B) real estate appraisals; or**
 - 9 **(C) other practices;**
- 10 **involving residential real estate transactions; or**
- 11 **(3) a combination of persons described in subdivisions (1) and**
- 12 **(2).**

13 **The attorney general shall designate persons to staff the toll free**
 14 **telephone number as required by this subsection.**

15 **(c) The persons designated by the attorney general under**
 16 **subsection (b) to staff the toll free telephone number required by**
 17 **this section shall ensure that any information received from callers**
 18 **to the telephone number is shared with any entity described in**
 19 **section 4 of this chapter that has jurisdiction over the matter**
 20 **reported. The unit shall establish uniform procedures for:**

- 21 **(1) responding to calls received;**
- 22 **(2) protecting:**
 - 23 **(A) the anonymity of callers who wish to report**
 - 24 **information anonymously; or**
 - 25 **(B) the identity of callers who request that their identity**
 - 26 **not be disclosed;**
- 27 **(3) documenting and verifying information reported by**
- 28 **callers; and**
- 29 **(4) transmitting reported information to the appropriate**
- 30 **entities described in section 4 of this chapter.**

31 **(d) The unit shall publicize the availability of the toll free**
 32 **telephone number established under this section in a manner**
 33 **reasonably designed to reach members of the public.**

34 SECTION 2. IC 4-6-12-8, AS AMENDED BY P.L.181-2006,
 35 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 36 JULY 1, 2008]: Sec. 8. The unit shall cooperate with the Indiana
 37 housing and community development authority in the development and
 38 implementation of the home ownership education programs established

1 under ~~IC 5-20-1-4(f)~~. **IC 5-20-1-4(d).**

2 SECTION 3. IC 4-6-12-9, AS AMENDED BY P.L.64-2007,
3 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2008]: Sec. 9. (a) The homeowner protection unit account
5 within the general fund is established to support the operations of the
6 unit. The account is administered by the attorney general.

7 (b) The homeowner protection unit account consists of:

8 (1) fees collected under IC 24-9-9; **and**

9 **(2) civil penalties collected under IC 24-5-0.5-4(l)(3).**

10 (c) The expenses of administering the homeowner protection unit
11 account shall be paid from money in the account.

12 (d) The treasurer of state shall invest the money in the homeowner
13 protection unit account not currently needed to meet the obligations of
14 the account in the same manner as other public money may be invested.

15 (e) Money in the homeowner protection unit account at the end of
16 a state fiscal year does not revert to the state general fund.

17 SECTION 4. IC 5-20-1-4, AS AMENDED BY P.L.99-2007,
18 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
19 JULY 1, 2008]: Sec. 4. (a) The authority has all of the powers
20 necessary or convenient to carry out and effectuate the purposes and
21 provisions of this chapter, including the power:

22 (1) to make or participate in the making of construction loans to
23 ~~sponsors of~~ **for** multiple family residential housing ~~that is~~
24 ~~federally assisted or assisted by a government sponsored~~
25 ~~enterprise, such as the Federal National Mortgage Association,~~
26 ~~the Federal Home Loan Mortgage Corporation, or the Federal~~
27 ~~Agricultural Mortgage Corporation, the Federal Home Loan~~
28 ~~Bank, and other similar entities~~ **under terms that are** approved
29 by the authority;

30 (2) to make or participate in the making of mortgage loans to
31 ~~sponsors of~~ **for** multiple family residential housing ~~that is~~
32 ~~federally assisted or assisted by a government sponsored~~
33 ~~enterprise, such as the Federal National Mortgage Association,~~
34 ~~the Federal Home Loan Mortgage Corporation, or the Federal~~
35 ~~Agricultural Mortgage Corporation, the Federal Home Loan~~
36 ~~Bank, and other similar entities~~ **under terms that are** approved
37 by the authority;

38 (3) to purchase or participate in the purchase from mortgage

1 lenders of mortgage loans made to persons of low and moderate
2 income for residential housing;

3 (4) to make loans to mortgage lenders for the purpose of
4 furnishing funds to such mortgage lenders to be used for making
5 mortgage loans for persons and families of low and moderate
6 income. However, the obligation to repay loans to mortgage
7 lenders shall be general obligations of the respective mortgage
8 lenders and shall bear such date or dates, shall mature at such
9 time or times, shall be evidenced by such note, bond, or other
10 certificate of indebtedness, shall be subject to prepayment, and
11 shall contain such other provisions consistent with the purposes
12 of this chapter as the authority shall by rule or resolution
13 determine;

14 (5) to collect and pay reasonable fees and charges in connection
15 with making, purchasing, and servicing of its loans, notes, bonds,
16 commitments, and other evidences of indebtedness;

17 (6) to acquire real property, or any interest in real property, by
18 conveyance, including purchase in lieu of foreclosure, or
19 foreclosure, to own, manage, operate, hold, clear, improve, and
20 rehabilitate such real property and sell, assign, exchange, transfer,
21 convey, lease, mortgage, or otherwise dispose of or encumber
22 such real property where such use of real property is necessary or
23 appropriate to the purposes of the authority;

24 (7) to sell, at public or private sale, all or any part of any mortgage
25 or other instrument or document securing a construction loan, a
26 land development loan, a mortgage loan, or a loan of any type
27 permitted by this chapter;

28 (8) to procure insurance against any loss in connection with its
29 operations in such amounts and from such insurers as it may deem
30 necessary or desirable;

31 (9) to consent, subject to the provisions of any contract with
32 noteholders or bondholders which may then exist, whenever it
33 deems it necessary or desirable in the fulfillment of its purposes
34 to the modification of the rate of interest, time of payment of any
35 installment of principal or interest, or any other terms of any
36 mortgage loan, mortgage loan commitment, construction loan,
37 loan to lender, or contract or agreement of any kind to which the
38 authority is a party;

- 1 (10) to enter into agreements or other transactions with any
- 2 federal, state, or local governmental agency for the purpose of
- 3 providing adequate living quarters for such persons and families
- 4 in cities and counties where a need has been found for such
- 5 housing;
- 6 (11) to include in any borrowing such amounts as may be deemed
- 7 necessary by the authority to pay financing charges, interest on
- 8 the obligations (for a period not exceeding the period of
- 9 construction and a reasonable time thereafter or if the housing is
- 10 completed, two (2) years from the date of issue of the
- 11 obligations), consultant, advisory, and legal fees and such other
- 12 expenses as are necessary or incident to such borrowing;
- 13 (12) to make and publish rules respecting its lending programs
- 14 and such other rules as are necessary to effectuate the purposes of
- 15 this chapter;
- 16 (13) to provide technical and advisory services to sponsors,
- 17 builders, and developers of residential housing and to residents
- 18 and potential residents, including housing selection and purchase
- 19 procedures, family budgeting, property use and maintenance,
- 20 household management, and utilization of community resources;
- 21 (14) to promote research and development in scientific methods
- 22 of constructing low cost residential housing of high durability;
- 23 (15) to encourage community organizations to participate in
- 24 residential housing development;
- 25 (16) to make, execute, and effectuate any and all agreements or
- 26 other documents with any governmental agency or any person,
- 27 corporation, association, partnership, limited liability company,
- 28 or other organization or entity necessary or convenient to
- 29 accomplish the purposes of this chapter;
- 30 (17) to accept gifts, devises, bequests, grants, loans,
- 31 appropriations, revenue sharing, other financing and assistance
- 32 and any other aid from any source whatsoever and to agree to, and
- 33 to comply with, conditions attached thereto;
- 34 (18) to sue and be sued in its own name, plead and be impleaded;
- 35 (19) to maintain an office in the city of Indianapolis and at such
- 36 other place or places as it may determine;
- 37 (20) to adopt an official seal and alter the same at pleasure;
- 38 (21) to adopt and from time to time amend and repeal bylaws for

1 the regulation of its affairs and the conduct of its business and to
 2 prescribe rules and policies in connection with the performance
 3 of its functions and duties;
 4 (22) to employ fiscal consultants, engineers, attorneys, real estate
 5 counselors, appraisers, and such other consultants and employees
 6 as may be required in the judgment of the authority and to fix and
 7 pay their compensation from funds available to the authority
 8 therefor;
 9 (23) notwithstanding IC 5-13, but subject to the requirements of
 10 any trust agreement entered into by the authority, to invest:
 11 (A) the authority's money, funds, and accounts;
 12 (B) any money, funds, and accounts in the authority's custody;
 13 and
 14 (C) proceeds of bonds or notes;
 15 in the manner provided by an investment policy established by
 16 resolution of the authority;
 17 (24) to make or participate in the making of construction loans,
 18 mortgage loans, or both, to individuals, partnerships, limited
 19 liability companies, corporations, and organizations for the
 20 construction of residential facilities for individuals with a
 21 developmental disability or for individuals with a mental illness
 22 or for the acquisition or renovation, or both, of a facility to make
 23 it suitable for use as a new residential facility for individuals with
 24 a developmental disability or for individuals with a mental illness;
 25 (25) to make or participate in the making of construction and
 26 mortgage loans to individuals, partnerships, corporations, limited
 27 liability companies, and organizations for the construction,
 28 rehabilitation, or acquisition of residential facilities for children;
 29 (26) to purchase or participate in the purchase of mortgage loans
 30 from:
 31 (A) public utilities (as defined in IC 8-1-2-1); or
 32 (B) municipally owned gas utility systems organized under
 33 IC 8-1.5;
 34 if those mortgage loans were made for the purpose of insulating
 35 and otherwise weatherizing single family residences in order to
 36 conserve energy used to heat and cool those residences;
 37 (27) to provide financial assistance to mutual housing
 38 associations (IC 5-20-3) in the form of grants, loans, or a

combination of grants and loans for the development of housing for low and moderate income families;

(28) to service mortgage loans made or acquired by the authority and to impose and collect reasonable fees and charges in connection with such servicing;

(29) subject to the authority's investment policy, to enter into swap agreements (as defined in IC 8-9.5-9-4) in accordance with IC 8-9.5-9-5 and IC 8-9.5-9-7;

(30) to promote and foster community revitalization through community services and real estate development;

(31) to coordinate and establish linkages between governmental and other social services programs to ensure the effective delivery of services to low income individuals;

(32) to cooperate with local housing officials and plan commissions in the development of projects that the officials or commissions have under consideration;

(33) to take actions necessary to implement its powers that the authority determines to be appropriate and necessary to ensure the availability of state or federal financial assistance; and

(34) to administer any program or money designated by the state or available from the federal government or other sources that is consistent with the authority's powers and duties.

The omission of a power from the list in this subsection does not imply that the authority lacks that power. The authority may exercise any power that is not listed in this subsection but is consistent with the powers listed in this subsection to the extent that the power is not expressly denied by the Constitution of the State of Indiana or by another statute.

(b) The authority shall ~~structure and administer any program conducted ensure that a mortgage loan acquired by the authority under subsection (a)(3) or made by a mortgage lender with funds provided by the authority under subsection (a)(4) in order to assure that no mortgage loan shall is not~~ knowingly be made to a person whose adjusted family income, ~~shall exceed as determined by the authority, exceeds~~ one hundred twenty-five percent (125%) of the median income for the geographic area ~~within which the person resides and at least forty percent (40%) of the mortgage loans so financed shall be for persons whose adjusted family income shall be below eighty~~

percent (80%) of the median income for such area involved. However, if the authority determines that additional encouragement is needed for the development of the geographic area involved, a mortgage loan acquired or made under subsection (a)(3) or (a)(4) may be made to a person whose adjusted family income, as determined by the authority, does not exceed one hundred forty percent (140%) of the median income for the geographic area involved. The authority shall establish procedures that the authority determines are appropriate to structure and administer any program conducted under subsection (a)(3) or (a)(4) for the purpose of acquiring or making mortgage loans to persons of low or moderate income. In determining what constitutes low income, moderate income, or median income for purposes of any program conducted under subsection (a)(3) or (a)(4), the authority shall consider:

(1) the appropriate geographic area in which to measure income levels; and

(2) the appropriate method of calculating low income, moderate income, or median income levels including:

(A) sources of;

(B) exclusions from; and

(C) adjustments to;

income.

(c) In addition to the powers set forth in subsection (a), the authority may, with the proceeds of bonds and notes sold to retirement plans covered by IC 5-10-1.7, structure and administer a program of purchasing or participating in the purchasing from mortgage lenders of mortgage loans made to qualified members of retirement plans and other individuals. The authority shall structure and administer any program conducted under this subsection to assure that:

(1) each mortgage loan is made as a first mortgage loan for real property:

(A) that is a single family dwelling, including a condominium or townhouse, located in Indiana;

(B) for a purchase price of not more than ninety-five thousand dollars (\$95,000);

(C) to be used as the purchaser's principal residence; and

(D) for which the purchaser has made a down payment in an

- 1 amount determined by the authority;
- 2 (2) no mortgage loan exceeds seventy-five thousand dollars
- 3 (\$75,000);
- 4 (3) any bonds or notes issued which are backed by mortgage loans
- 5 purchased by the authority under this subsection shall be offered
- 6 for sale to the retirement plans covered by IC 5-10-1.7; and
- 7 (4) qualified members of a retirement plan shall be given
- 8 preference with respect to the mortgage loans that in the
- 9 aggregate do not exceed the amount invested by their retirement
- 10 plan in bonds and notes issued by the authority that are backed by
- 11 mortgage loans purchased by the authority under this subsection.
- 12 (d) As used in this section, "a qualified member of a retirement
- 13 plan" means an active or retired member:
- 14 (1) of a retirement plan covered by IC 5-10-1.7 that has invested
- 15 in bonds and notes issued by the authority that are backed by
- 16 mortgage loans purchased by the authority under subsection (c);
- 17 and
- 18 (2) who for a minimum of two (2) years preceding the member's
- 19 application for a mortgage loan has:
- 20 (A) been a full-time state employee, teacher, judge, police
- 21 officer, or firefighter;
- 22 (B) been a full-time employee of a political subdivision
- 23 participating in the public employees' retirement fund;
- 24 (C) been receiving retirement benefits from the retirement
- 25 plan; or
- 26 (D) a combination of employment and receipt of retirement
- 27 benefits equaling at least two (2) years.
- 28 (e) (c) The authority, when directed by the governor, shall
- 29 administer programs and funds under 42 U.S.C. 1437 et seq.
- 30 (f) (d) The authority shall identify, promote, assist, and fund home
- 31 ownership education programs conducted throughout Indiana by
- 32 nonprofit counseling agencies certified by the authority using funds
- 33 appropriated under section 27 of this chapter. The attorney general and
- 34 the entities listed in IC 4-6-12-4(a)(1) through IC 4-6-12-4(a)(10) shall
- 35 cooperate with the authority in implementing this subsection.
- 36 SECTION 5. IC 5-20-1-4.5 IS AMENDED TO READ AS
- 37 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4.5. (a) As used in this
- 38 section, "person with a disability" means a person who, by reason of

1 physical, mental, or emotional defect or infirmity, whether congenital
 2 or acquired by accident, injury, or disease, is totally or partially
 3 prevented from achieving the fullest attainable physical, social,
 4 economic, mental, and vocational participation in the normal process
 5 of living. "special needs populations" include the following:

- 6 (1) Persons with physical or developmental disabilities.
- 7 (2) Persons with mental impairments.
- 8 (3) Single parent households.
- 9 (4) Victims of domestic violence.
- 10 (5) Abused children.
- 11 (6) Persons with chemical addictions.
- 12 (7) Homeless persons.
- 13 (8) The elderly.

14 (b) As used in this section, "qualified building" means a building:

- 15 (1) that is used or will be used to provide residential housing for
- 16 ~~persons with disabilities;~~ **special needs populations;** and
- 17 (2) for which a taxpayer is eligible to claim a low income housing
- 18 credit under 26 U.S.C. 42.

19 (c) Subject to subsection (d), the authority shall allocate to qualified
 20 buildings at least ten percent (10%) of the total dollar amount of federal
 21 low income housing credits allocated to the authority under 26 U.S.C.
 22 42. The authority shall allocate credits under this section based on the
 23 proportionate amount of a qualified building that is used to provide
 24 residential housing for ~~persons with disabilities;~~ **special needs**
 25 **populations,** as determined by the authority.

26 (d) The authority shall hold available the allocation made under
 27 subsection (c) for qualified buildings through October 31 of each
 28 calendar year. Beginning November 1 of each calendar year, any part
 29 of the allocation that remains unassigned shall be available for any
 30 appropriate use under 26 U.S.C. 42.

31 SECTION 6. IC 5-20-1-8, AS AMENDED BY P.L.235-2005,
 32 SECTION 89, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 33 JULY 1, 2008]: Sec. 8. (a) Subject to the approval of the ~~governor;~~
 34 **public finance director appointed under IC 4-4-11-9,** the authority
 35 is hereby authorized to issue bonds or notes, or a combination thereof,
 36 to carry out and effectuate its purposes and powers. The principal of,
 37 and the interest on, such bonds or notes shall be payable solely from
 38 the funds provided for such payment in this chapter. The authority may

1 secure the repayment of such bonds and notes by the pledge of
2 mortgages and notes of others, revenues derived from operations and
3 loan repayments, the proceeds of its bonds, and any available revenues
4 or assets of the authority. The bonds or notes of each issue shall be
5 dated and may be made redeemable before maturity at the option of the
6 authority, at such price or prices and under such terms and conditions
7 as may be determined by the authority. Any such bonds or notes shall
8 bear interest at such rate or rates as may be determined by the
9 authority. Notes shall mature at such time or times not exceeding ten
10 (10) years from their date or dates, and bonds shall mature at such time
11 or times not exceeding forty-five (45) years from their date or dates, as
12 may be determined by the authority. The authority shall determine the
13 form and manner of execution of the bonds or notes, including any
14 interest coupons to be attached thereto, and shall fix the denomination
15 or denominations and the place or places of payment of principal and
16 interest, which may be any bank or trust company within or outside the
17 state. In case any officer whose signature, or a facsimile of whose
18 signature, shall appear on any bonds or notes or coupons attached
19 thereto shall cease to be such officer before the delivery thereof, such
20 signature or such facsimile shall nevertheless be valid and sufficient for
21 all purposes the same as if ~~he~~ **the person** had remained in office until
22 such delivery. The authority may also provide for the authentication of
23 the bonds or notes by a trustee or fiscal agent. The bonds or notes may
24 be issued in coupon or registered form, or both, as the authority may
25 determine, and provision may be made for the registration of any
26 coupon bonds or notes as to principal alone and also as to both
27 principal and interest, and for the reconversion into coupon bonds or
28 notes of any bonds or notes registered as to both principal and interest,
29 and for the interchange of registered and coupon bonds or notes. Upon
30 the approval of a resolution of the authority authorizing the sale of its
31 bonds or notes, such bonds or notes may be sold in such manner, either
32 at public or private sale, and for such price as the authority shall
33 determine to be for the best interest of the authority and to best
34 effectuate the purposes of this chapter.

35 (b) The proceeds of any bonds or notes shall be used solely for the
36 purposes for which they are issued. The proceeds shall be disbursed in
37 such manner and under such restrictions, if any, as the authority may
38 provide in the resolution authorizing the issuance of such bonds or

1 notes or in the trust agreement securing the same.

2 (c) Prior to the preparation of definitive bonds, the authority may,
3 under like restrictions and subject to the approval of the ~~governor~~,
4 **public finance director appointed under IC 4-4-11-9**, issue interim
5 receipts or temporary bonds, with or without coupons, exchangeable for
6 definitive bonds when such bonds shall have been executed and are
7 available for delivery. The authority may also provide for the
8 replacement of any bonds or notes which shall become mutilated or
9 shall be destroyed or lost.

10 (d) The authority shall cooperate with and use the assistance of the
11 Indiana finance authority established under IC 4-4-11 in the issuance
12 of the bonds or notes.

13 SECTION 7. IC 5-20-1-18, AS AMENDED BY P.L.235-2005,
14 SECTION 90, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
15 JULY 1, 2008]: Sec. 18. The authority shall, promptly following the
16 close of each fiscal year, submit an annual report of its activities for the
17 preceding year to the ~~governor~~, **public finance director appointed**
18 **under IC 4-4-11-9**, the budget committee, and the general assembly.
19 An annual report submitted under this section to the general assembly
20 must be in an electronic format under IC 5-14-6. The report shall set
21 forth a complete operating and financial statement of the authority
22 during such year, and a copy of such report shall be available to
23 inspection by the public at the Indianapolis office of the authority. The
24 authority shall cause an audit of its books and accounts to be made at
25 least once in each year by an independent certified public accountant
26 and the cost thereof may be paid from any available money of the
27 authority.

28 SECTION 8. IC 5-20-1-27, AS AMENDED BY P.L.181-2006,
29 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
30 JULY 1, 2008]: Sec. 27. (a) The home ownership education account
31 within the state general fund is established to support the home
32 ownership education programs established under section ~~4(f)~~ **4(d)** of
33 this chapter. The account is administered by the authority.

34 (b) The home ownership education account consists of fees
35 collected under IC 24-9-9.

36 (c) The expenses of administering the home ownership education
37 account shall be paid from money in the ~~fund~~ **account**.

38 (d) The treasurer of state shall invest the money in the home

ownership education account not currently needed to meet the obligations of the account in the same manner as other public money may be invested.

SECTION 9. IC 5-20-3-4, AS AMENDED BY P.L.181-2006, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. (a) A mutual housing association may be established as a nonprofit corporation incorporated under IC 23-7-1.1 (before its repeal on August 1, 1991) or IC 23-17 to prevent and eliminate neighborhood deterioration and to preserve neighborhood stability by:

(1) providing high quality, long term housing for families of low and moderate income; and

(2) affording community and residential involvement in the provision of that housing.

(b) The articles of incorporation of a mutual housing association must meet the requirements of the Indiana housing and community development authority under IC 5-20-1-6 and must be approved by the authority.

(c) The articles of incorporation of a mutual housing association must include a provision that provides that if the mutual housing association dissolves, is involved in a bankruptcy proceeding, or otherwise disposes of its physical properties, the association may only transfer the assets to another entity that provides high quality long term housing for families of low and moderate income."

SECTION 10. IC 6-1.1-12-43 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 43. (a) For purposes of this section:

(1) "benefit" refers to:

(A) a deduction under section 1, 9, 11, 13, 14, 16, 17.4, 26, 29, 31, 33, or 34 of this chapter; or

(B) the homestead credit under IC 6-1.1-20.9-2;

(2) "closing agent" means a person that closes a transaction;

(3) "customer" means an individual who obtains a loan in a transaction; and

(4) "transaction" means a single family residential:

(A) first lien purchase money mortgage transaction; or

(B) refinancing transaction.

(b) Before closing a transaction after December 31, 2004, a closing

1 agent must provide to the customer the form referred to in subsection
2 (c).

3 (c) Before June 1, 2004, the department of local government finance
4 shall prescribe the form to be provided by closing agents to customers
5 under subsection (b). The department shall make the form available to
6 closing agents, county assessors, county auditors, and county treasurers
7 in hard copy and electronic form. County assessors, county auditors,
8 and county treasurers shall make the form available to the general
9 public. The form must:

10 (1) on one (1) side:

11 (A) list each benefit;

12 (B) list the eligibility criteria for each benefit; and

13 (C) indicate that a new application for a deduction under
14 section 1 of this chapter is required when residential real
15 property is refinanced;

16 (2) on the other side indicate:

17 (A) each action by; and

18 (B) each type of documentation from;

19 the customer required to file for each benefit; and

20 (3) be printed in one (1) of two (2) or more colors prescribed by
21 the department of local government finance that distinguish the
22 form from other documents typically used in a closing referred to
23 in subsection (b).

24 (d) A closing agent:

25 (1) may reproduce the form referred to in subsection (c);

26 (2) in reproducing the form, must use a print color prescribed by
27 the department of local government finance; and

28 (3) is not responsible for the content of the form referred to in
29 subsection (c) and shall be held harmless by the department of
30 local government finance from any liability for the content of the
31 form.

32 **(e) This subsection applies to a transaction that is closed after**
33 **December 31, 2009. In addition to providing the customer the form**
34 **described in subsection (c) before closing the transaction, a closing**
35 **agent shall do the following as soon as possible after the closing,**
36 **and within the time prescribed by the department of insurance**
37 **under IC 27-7-3-15.5:**

38 **(1) Input the information described in IC 27-7-3-15.5(b) into**

1 **the system maintained by the department of insurance under**
 2 **IC 27-7-3-15.5.**

3 **(2) Submit the form described in IC 27-7-3-15.5(c) to the data**
 4 **base described in IC 27-7-3-15.5(c)(2)(B).**

5 ~~(e)~~ **(f)** A closing agent to which this section applies shall document
 6 **its the closing agent's** compliance with this section with respect to
 7 each transaction in the form of verification of compliance signed by the
 8 customer.

9 ~~(f)~~ **(g)** A closing agent is subject to a civil penalty of twenty-five
 10 dollars (\$25) for each instance in which the closing agent fails to
 11 comply with this section with respect to a customer. The penalty:

12 (1) may be enforced by the state agency that has administrative
 13 jurisdiction over the closing agent in the same manner that the
 14 agency enforces the payment of fees or other penalties payable to
 15 the agency; and

16 (2) shall be paid into the property tax replacement fund.

17 **(h)** A closing agent is not liable for any other damages claimed by
 18 a customer because of:

19 **(1)** the closing agent's mere failure to provide the appropriate
 20 document to the customer **under subsection (b); or**

21 **(2) with respect to a transaction that is closed after December**
 22 **31, 2009, the closing agent's failure to input the information**
 23 **or submit the form described in subsection (e).**

24 ~~(g)~~ **(i)** The state agency that has administrative jurisdiction over a
 25 closing agent shall:

26 (1) examine the closing agent to determine compliance with this
 27 section; and

28 (2) impose and collect penalties under subsection ~~(f)~~: **(g)**.

29 SECTION 11. IC 20-24-8-5, AS AMENDED BY P.L.2-2006,
 30 SECTION 111, IS AMENDED TO READ AS FOLLOWS
 31 [EFFECTIVE JULY 1, 2008]: Sec. 5. The following statutes and rules
 32 and guidelines adopted under the following statutes apply to a charter
 33 school:

34 (1) IC 5-11-1-9 (required audits by the state board of accounts).

35 (2) IC 20-39-1-1 (unified accounting system).

36 (3) IC 20-35 (special education).

37 (4) IC 20-26-5-10 and IC 20-28-5-9 (criminal history).

38 (5) IC 20-26-5-6 (subject to laws requiring regulation by state

- 1 agencies).
- 2 (6) IC 20-28-7-14 (void teacher contract when two (2) contracts
- 3 are signed).
- 4 (7) IC 20-28-10-12 (nondiscrimination for teacher marital status).
- 5 (8) IC 20-28-10-14 (teacher freedom of association).
- 6 (9) IC 20-28-10-17 (school counselor immunity).
- 7 (10) For conversion charter schools only, IC 20-28-6, IC 20-28-7,
- 8 IC 20-28-8, IC 20-28-9, and IC 20-28-10.
- 9 (11) IC 20-33-2 (compulsory school attendance).
- 10 (12) IC 20-33-3 (limitations on employment of children).
- 11 (13) IC 20-33-8-19, IC 20-33-8-21, and IC 20-33-8-22 (student
- 12 due process and judicial review).
- 13 (14) IC 20-33-8-16 (firearms and deadly weapons).
- 14 (15) IC 20-34-3 (health and safety measures).
- 15 (16) IC 20-33-9 (reporting of student violations of law).
- 16 (17) IC 20-30-3-2 and IC 20-30-3-4 (patriotic commemorative
- 17 observances).
- 18 (18) IC 20-31-3, IC 20-32-4, IC 20-32-5, IC 20-32-6, IC 20-32-8,
- 19 or any other statute, rule, or guideline related to standardized
- 20 testing (assessment programs, including remediation under the
- 21 assessment programs).
- 22 (19) IC 20-33-7 (parental access to education records).
- 23 (20) IC 20-31 (accountability for school performance and
- 24 improvement).
- 25 **(21) Beginning with the school year that begins in the**
- 26 **calendar year beginning January 1, 2010, IC 20-30-5-19**
- 27 **(instruction concerning consumer transactions and personal**
- 28 **financial responsibility).**

29 SECTION 12. IC 20-30-5-19 IS ADDED TO THE INDIANA
 30 CODE AS A NEW SECTION TO READ AS FOLLOWS
 31 [EFFECTIVE JULY 1, 2008]: **Sec. 19. (a) Beginning with the school**
 32 **year that begins in the calendar year beginning January 1, 2010,**
 33 **each school corporation (including each charter school) and each**
 34 **nonpublic school that voluntarily has become accredited under**
 35 **IC 20-19-2-8 shall include in its curriculum for all students in**
 36 **grades 9 through 12 instruction designed to:**

- 37 **(1) increase students' awareness of certain consumer**
- 38 **transactions, including mortgage transactions; and**

- 1 **(2) foster personal financial responsibility.**
- 2 **(b) A school corporation (including a charter school) and a**
- 3 **nonpublic school that voluntarily has become accredited under**
- 4 **IC 20-19-2-8 may meet the requirements of subsection (a) by:**
- 5 **(1) integrating the instruction described in subsection (a) in its**
- 6 **required mathematics curriculum; or**
- 7 **(2) conducting a separate class or seminar that includes the**
- 8 **instruction described in subsection (a).**
- 9 **(c) A person may not receive a high school diploma from a**
- 10 **school subject to this section unless the person has received the**
- 11 **instruction required by this section.**
- 12 **(d) The department, in collaboration with the department of**
- 13 **financial institutions established by IC 28-11-1-1, shall develop**
- 14 **guidelines and the state board shall adopt rules under IC 4-22-2 to**
- 15 **assist teachers assigned to provide the instruction required by this**
- 16 **section."**
- 17 Page 1, strike lines 8 through 11.
- 18 Page 1, line 12, strike "(c)" and insert "**(b)**".
- 19 Page 1, line 15, strike "(d)" and insert "**(c)**".
- 20 Page 1, line 17, strike "(e)" and insert "**(d)**".
- 21 Page 2, line 15, strike "or".
- 22 Page 2, line 17, delete "product." and insert "product; **or**
- 23 **(5) a creditor that is licensed under IC 24-4.4-2-402."**
- 24 Page 2, line 18, strike "(f)" and insert "**(e)**".
- 25 Page 2, line 20, strike "(g)" and insert "**(f)**".
- 26 Page 2, line 23, strike "(h)" and insert "**(g)**".
- 27 Page 2, line 26, strike "(e)." and insert "**(d)**".
- 28 Page 2, line 27, strike "(i)" and insert "**(h)**".
- 29 Page 2, line 31, strike "(j)" and insert "**(i)**".
- 30 Page 2, line 35, strike "(k)" and insert "**(j)**".
- 31 Page 2, line 41, strike "(l)" and insert "**(k)**".
- 32 Page 3, line 7, delete "(m)" and insert "**(l)**".
- 33 Page 3, line 29, delete "(n)" and insert "**(m)**".
- 34 Page 3, line 37, delete "(o)" and insert "**(n)**".
- 35 Page 4, line 30, delete "However, if the commissioner seeks
- 36 **evidence of".**
- 37 Page 4, delete lines 31 through 40.
- 38 Page 5, line 1, delete "may" and insert "**shall**".

- 1 Page 5, line 26, strike "(1)" and insert "(A)".
- 2 Page 5, line 27, strike "(2)" and insert "(B)".
- 3 Page 5, line 30, strike "(3)" and insert "(C)".
- 4 Page 5, line 33, strike "(4)" and insert "(D)".
- 5 Page 6, line 41, strike "fifty" and insert "one hundred".
- 6 Page 6, line 41, strike "(\$50,000)," and insert "(\$100,000),".
- 7 Page 7, line 28, strike "and".
- 8 Page 7, between lines 28 and 29, begin a new line block indented
- 9 and insert:
- 10 **"(2) individual described in subsection (a)(4); and".**
- 11 Page 7, line 29, strike "(2)" and insert "(3)".
- 12 Page 7, line 35, delete "owner" and insert "owner, the individual
- 13 **described in subsection (a)(4),".**
- 14 Page 7, line 38, after "owner" insert ", individual described in
- 15 **subsection (a)(4),".**
- 16 Page 8, line 3, strike "and".
- 17 Page 8, between lines 3 and 4, begin a new line block indented and
- 18 insert:
- 19 **"(2) individual described in subsection (a)(4); and".**
- 20 Page 8, line 4, strike "(2)" and insert "(3)".
- 21 Page 8, line 12, after "owner" insert ", the individual described in
- 22 **subsection (a)(4),".**
- 23 Page 17, strike lines 3 through 6.
- 24 Page 17, line 7, strike "(4)" and insert "(3)".
- 25 Page 17, line 9, strike "(5)" and insert "(4)".
- 26 Page 17, line 15, strike "(6)" and insert "(5)".
- 27 Page 17, line 19, strike "(7)" and insert "(6)".
- 28 Page 17, strike lines 20 through 33.
- 29 Page 17, line 34, strike "Indiana during".
- 30 Page 17, line 34, delete "the".
- 31 Page 17, line 34, strike "calendar year".
- 32 Page 17, line 34, delete "immediately preceding".
- 33 Page 17, delete lines 35 through 36.
- 34 Page 17, strike lines 37 through 38.
- 35 Page 18, strike lines 13 through 20.
- 36 Page 18, line 21, strike "(3) be accompanied by a fee of four
- 37 hundred dollars (\$400),".
- 38 Page 18, line 21, delete "plus".

- 1 Page 18, delete lines 22 through 23.
- 2 Page 18, strike lines 24 through 35.
- 3 Page 18, line 37, delete "(a) As used in this".
- 4 Page 18, delete lines 38 through 42.
- 5 Page 19, delete line 1.
- 6 Page 19, line 2, delete "(b)" and insert "(a)".
- 7 Page 19, line 26, delete "that personal information is" and insert

8 **"the personal information is:**

- 9 **(A) included as part of:**
 - 10 **(i) an application form; or**
 - 11 **(ii) a document that is used in connection with an**
 - 12 **application process or an enrollment process;**
 - 13 **(B) used to obtain a consumer report (as defined in**
 - 14 **IC 24-5-24-2) for an applicant for credit; or**
 - 15 **(C) used to establish, amend, or terminate an account, a**
 - 16 **contract, or a policy, or to confirm the accuracy of the**
 - 17 **personal information.**

18 **However, personal information allowed to be disclosed under**
 19 **this subdivision may not be printed in whole or in part on a**
 20 **postcard or other mailer that does not require an envelope, or**
 21 **in a manner that makes the personal information visible on an**
 22 **envelope or a mailer without the envelope or mailer being**
 23 **opened.**

24 **(8) Engage in any reckless or negligent activity allowing the**
 25 **release or disclosure of the unencrypted, unredacted personal**
 26 **information of one (1) or more borrowers or prospective**
 27 **borrowers. An activity described in this subdivision includes**
 28 **an action prohibited by section 18(d) of this chapter.**

29 **(9) Recommend a loan to, or procure a loan on behalf of, a**
 30 **prospective borrower without first conducting a reasonable**
 31 **inquiry concerning the prospective borrower's ability to**
 32 **repay the loan. For purposes of this subdivision, a person**
 33 **conducts a reasonable inquiry concerning a borrower's ability**
 34 **to repay a loan if the person:**

- 35 **(A) obtains a consumer report (as defined in IC 24-5-24-2)**
- 36 **or other information maintained by a consumer reporting**
- 37 **agency (as defined in IC 24-5-24-3) with respect to the**
- 38 **prospective borrower; and**

1 **(B) obtains information about the prospective borrower**
 2 **through:**

- 3 **(i) a current or past employer of the prospective**
 4 **borrower;**
 5 **(ii) public records; or**
 6 **(ii) any other legal or commercially reasonable means.".**

7 Page 19, delete lines 27 through 42.

8 Page 20, delete lines 1 through 7.

9 Page 20, line 8, delete "(c)" and insert "**(b)**".

10 Page 20, line 8, delete "(b)" and insert "**(a)**".

11 Page 21, after line 23, begin a new paragraph and insert:

12 "SECTION 23. IC 24-4.4 IS ADDED TO THE INDIANA CODE
 13 AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE
 14 JANUARY 1, 2009]:

15 **ARTICLE 4.4. FIRST LIEN MORTGAGE LENDING**

16 **Chapter 1. General Provisions and Definitions**

17 **Sec. 101. This article shall be known and may be cited as the**
 18 **First Lien Mortgage Lending Act.**

19 **Sec. 102. (1) This article shall be liberally construed and applied**
 20 **to promote its underlying purposes and policies.**

21 **(2) The underlying purposes and policies of this article are:**

- 22 **(a) to permit and encourage the development of fair and**
 23 **economically sound first lien mortgage lending practices; and**
 24 **(b) to conform the regulation of first lien mortgage lending**
 25 **practices to applicable state and federal laws, rules, and**
 26 **regulations.**

27 **(3) A reference to a requirement imposed by this article includes**
 28 **reference to a related rule of the department adopted under this**
 29 **article.**

30 **(4) A reference to a federal law in this article is a reference to**
 31 **the law in effect December 31, 2008.**

32 **Sec. 103. This article:**

- 33 **(1) is a general act intended as a unified coverage of its subject**
 34 **matter; and**
 35 **(2) any part of this article may not be considered to be**
 36 **impliedly repealed by subsequent legislation if such**
 37 **construction can reasonably be avoided.**

38 **Sec. 104. The provisions of this article are severable, so that if:**

1 (1) any provisions of this article; or

2 (2) the application of this article to any person or
3 circumstances;

4 is held invalid, the invalidity does not affect other provisions or
5 applications of this article that can be given effect without the
6 invalid provision or application.

7 **Sec. 201. (1) Except as provided in subsection (2), this article**
8 **applies to a first lien mortgage transaction:**

9 (a) that is secured by an interest in land in Indiana; and

10 (b) the closing for which takes place after December 31, 2008.

11 **(2) This article does not apply to a first lien mortgage**
12 **transaction if:**

13 (a) the debtor is not a resident of Indiana at the time the
14 transaction is entered into; and

15 (b) the laws of the debtor's state of residence requires that the
16 transaction be made under the laws of the state of the debtor's
17 residence.

18 **Sec. 202. This article does not apply to the following:**

19 (1) Extensions of credit to government or governmental
20 agencies or instrumentalities.

21 (2) A first lien mortgage transaction in which the debt is
22 incurred primarily for a purpose other than a personal,
23 family, or household purpose

24 (3) An extension of credit primarily for a business, a
25 commercial, or an agricultural purpose.

26 (4) A first lien mortgage transaction made:

27 (a) in compliance with the requirements of; and

28 (b) by a community development corporation (as defined
29 in IC 4-4-28-2) acting as a subrecipient of funds from;

30 the Indiana housing and community development authority
31 established by IC 5-20-1-3.

32 (5) A supervised financial organization.

33 (6) An operating subsidiary that is majority owned, directly
34 or indirectly, by a supervised financial organization to the
35 extent the operating subsidiary is regulated by the chartering
36 authority of the supervised financial organization.

37 (7) A credit union service organization that is majority owned,
38 directly or indirectly, by one (1) or more credit unions.

(8) Agencies, instrumentalities, and government owned corporations of the United States, including United States government sponsored enterprises.

Sec. 203. Any civil court in Indiana may exercise jurisdiction over any creditor with respect to any conduct in Indiana governed by this article or with respect to any claim arising from a transaction subject to this article. In addition to any other method provided by rule or by statute, personal jurisdiction over a creditor may be acquired in a civil action or proceeding instituted in any civil court by the service of process.

Sec. 301. In addition to definitions appearing in subsequent chapters of this article, the following definitions apply throughout this article:

(1) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(2) "Creditor" means a person:

(a) that regularly engages in the extension of first lien mortgage transactions that are subject to a credit service charge or loan finance charge, as applicable, or are payable by written agreement in more than four (4) installments (not including a down payment); and

(b) to which the obligation is initially payable, either on the face of the note or contract, or by agreement if there is not a note or contract.

The term does not include a person described in subsection (13)(a) in a tablefunded transaction.

(3) "Department" refers to the members of the department of financial institutions.

(4) "Director" refers to the director of the department of financial institutions.

(5) "Dwelling" means a residential structure that contains one (1) to four (4) units, regardless of whether the structure is attached to real property. The term includes an individual:

- (a) condominium unit;
- (b) cooperative unit;
- (c) mobile home; or
- (d) trailer;

- 1 that is used as a residence.
- 2 **(6) "First lien mortgage transaction"** means a loan in which
- 3 a first mortgage, or a land contract which constitutes a first
- 4 lien, is created or retained against land upon which there is a
- 5 dwelling that is or will be used by the debtor primarily for
- 6 personal, family, or household purposes.
- 7 **(7) "Loan" includes:**
- 8 **(a) the creation of debt by:**
- 9 **(i) the creditor's payment of or agreement to pay money**
- 10 to the debtor or to a third party for the account of the
- 11 debtor; or
- 12 **(ii) the extension of credit by a person who regularly**
- 13 engages as a seller in credit transactions primarily
- 14 secured by an interest in land;
- 15 **(b) the creation of debt by a credit to an account with the**
- 16 creditor upon which the debtor is entitled to draw
- 17 immediately; and
- 18 **(c) the forbearance of debt arising from a loan.**
- 19 **(8) "Payable in installments", with respect to a debt or an**
- 20 obligation, means that payment is required or permitted by
- 21 written agreement to be made in more than four (4)
- 22 installments not including a down payment.
- 23 **(9) "Person" includes an individual or an organization.**
- 24 **(10) A person is "regularly engaged" as a creditor in first lien**
- 25 mortgage transactions in Indiana if:
- 26 **(a) the person acted as a creditor in first lien mortgage**
- 27 transactions in Indiana more than five (5) times in the
- 28 preceding calendar year; or
- 29 **(b) the person did not meet the numerical standards set**
- 30 forth in subdivision (a) in the preceding calendar year, but
- 31 has or will meet the numerical standards set forth in
- 32 subdivision (a) in the current calendar year.
- 33 **(11) "Revolving first lien mortgage transaction" means an**
- 34 arrangement between a creditor and a debtor in which:
- 35 **(a) the creditor permits the debtor to obtain advances from**
- 36 time to time;
- 37 **(b) the unpaid balances of principal, credit service charges**
- 38 or loan finance charges, and other appropriate charges are

- 1 debited to an account; and
- 2 (c) the debtor has the privilege of paying the balances in
- 3 installments.
- 4 (12) "Supervised financial organization" means a person that
- 5 is:
- 6 (a) organized, chartered, or holding an authorization
- 7 certificate under the laws of a state or of the United States
- 8 which authorizes the person to make loans and to receive
- 9 deposits, including deposits into a savings, share,
- 10 certificate, or deposit account; and
- 11 (b) subject to supervision by an official or agency of a state
- 12 or of the United States.
- 13 (13) "Tablefunded" means a transaction in which:
- 14 (a) a person closes a first lien mortgage transaction in the
- 15 person's own name as a mortgagee with funds provided by
- 16 one (1) or more other persons; and
- 17 (b) the transaction is assigned simultaneously to the
- 18 mortgage creditor providing the funding not later than one
- 19 (1) business day after the funding of the transaction.

20 Chapter 2. Miscellaneous

21 Sec. 101. This chapter shall be known and may be cited as the

22 First Lien Mortgage Lending Act - Miscellaneous.

23 Sec. 201. (1) A creditor or mortgage servicer shall provide an

24 accurate payoff amount for a first lien mortgage transaction to the

25 debtor not later than ten (10) calendar days after the creditor or

26 mortgage servicer receives the debtor's written request for the

27 accurate payoff amount. A creditor or mortgage servicer who fails

28 to provide an accurate payoff amount is liable for:

- 29 (a) one hundred dollars (\$100) if an accurate payoff amount
- 30 is not provided by the creditor or mortgage servicer not later
- 31 than ten (10) calendar days after the creditor or mortgage
- 32 servicer receives the debtor's first written request; and
- 33 (b) the greater of:
- 34 (i) one hundred dollars (\$100); or
- 35 (ii) the loan finance charge that accrues on the first lien
- 36 mortgage transaction from the date the creditor or
- 37 mortgage servicer receives the first written request until
- 38 the date on which the accurate payoff amount is provided;

1 if an accurate payoff amount is not provided by the creditor
 2 or mortgage servicer not later than ten (10) calendar days
 3 after the creditor or mortgage servicer receives the debtor's
 4 second written request, and the creditor or mortgage servicer
 5 fails to comply with subdivision (a).

6 (2) This subsection applies to a first lien mortgage transaction
 7 with respect to which any installment or minimum payment due is
 8 delinquent for at least ten (10) days. The creditor, servicer, or the
 9 creditor's agent shall acknowledge a written offer made in
 10 connection with a proposed short sale not later than ten (10)
 11 business days after the date of the offer if the offer complies with
 12 the requirements for a qualified written request set forth in 12
 13 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is
 14 required to acknowledge a written offer made in connection with
 15 a proposed short sale from a third party acting on behalf of the
 16 debtor only if the debtor has provided written authorization for the
 17 creditor, servicer, or creditor's agent to do so. Not later than
 18 twenty (20) business days after receipt of an offer under this
 19 subsection, the creditor, servicer, or creditor's agent shall respond
 20 to the offer with an acceptance or a rejection of the offer. As used
 21 in this subsection, "short sale" means a transaction in which the
 22 property that is the subject of a first lien mortgage transaction is
 23 sold for an amount that is less than the amount of the debtor's
 24 outstanding obligation under the first lien mortgage transaction.
 25 A creditor or mortgage servicer that fails to respond to an offer
 26 within the time prescribed by this subsection is liable:

27 (a) under the terms set forth in subsection (1), as if the
 28 creditor or mortgage servicer had failed to provide a first lien
 29 mortgage transaction payoff amount; and

30 (b) in accordance with 12 U.S.C. 2605(f) in any action brought
 31 under that section.

32 Sec. 301. (1) A violation of a state or federal law, regulation, or
 33 rule applicable to first lien mortgage transactions is a violation of
 34 this article.

35 (2) The department may enforce penalty provisions set forth in
 36 15 U.S.C. 1640 for violations of disclosure requirements applicable
 37 to first lien mortgage transactions.

38 Sec. 401. Unless a person subject to this article has first obtained

1 a license from the department, the person shall not regularly
 2 engage in Indiana as a creditor in first lien mortgage transactions.
 3 However, this article does not require an employee of a person that
 4 is licensed under this article to obtain a license to make a first lien
 5 mortgage loan.

6 Sec. 402. (1) The department shall receive and act on all
 7 applications for licenses to engage in first lien mortgage
 8 transactions. Applications must be made as prescribed by the
 9 director.

10 (2) A license may not be issued unless the department finds that
 11 the financial responsibility, character, and fitness of:

- 12 (a) the applicant and any significant affiliate of the applicant;
- 13 (b) each executive officer, director, or manager of the
- 14 applicant, or any other individual having a similar status or
- 15 performing a similar function for the applicant; and
- 16 (c) if known, each person directly or indirectly owning of
- 17 record or owning beneficially at least ten percent (10%) of the
- 18 outstanding shares of any class of equity security of the
- 19 applicant;

20 are such as to warrant belief that the business will be operated
 21 honestly and fairly within the purposes of this article.

22 (3) The director is entitled to request evidence of compliance
 23 with this section at:

- 24 (a) the time of application;
- 25 (b) the time of renewal of a license; or
- 26 (c) any other time considered necessary by the director.

27 (4) Evidence of compliance with this section may include:

- 28 (a) criminal background checks, including a national criminal
- 29 history background check (as defined in IC 10-13-3-12) by the
- 30 Federal Bureau of Investigation, for any individual described
- 31 in subsection (2);
- 32 (b) credit histories; and
- 33 (c) other background checks considered necessary by the
- 34 director.

35 If the director requests a national criminal history background
 36 check under subdivision (a) for an individual described in
 37 subsection (2), the director shall require the individual to submit
 38 fingerprints to the department or to the state police department, as

1 appropriate, at the time evidence of compliance is requested under
2 subsection (3). The individual to whom the request is made shall
3 pay any fees or costs associated with the fingerprints and the
4 national criminal history background check. The national criminal
5 history background check may be used by the director to
6 determine the individual's compliance with this section. The
7 director or the department may not release the results of the
8 national criminal history background check to any private entity.

9 (5) The department may deny an application under this section
10 if the director of the department determines that the application
11 was submitted for the benefit of, or on behalf of, a person who does
12 not qualify for a license.

13 (6) Upon written request, the applicant is entitled to a hearing
14 on the question of the qualifications of the applicant for a license
15 in the manner provided in IC 4-21.5.

16 (7) The applicant shall pay the following fees at the time
17 designated by the department:

18 (a) An initial license fee as established by the department
19 under IC 28-11-3-5.

20 (b) An annual renewal fee as established by the department
21 under IC 28-11-3-5.

22 (c) Examination fees as established by the department under
23 IC 28-11-3-5.

24 (8) A fee as established by the department under IC 28-11-3-5
25 may be charged for each day the annual renewal fee under
26 subsection (7)(b) is delinquent.

27 (9) A license issued under this section is not assignable or
28 transferable.

29 (10) Subject to subsection (11), the director may designate an
30 automated central licensing system and repository, operated by a
31 third party, to serve as the sole entity responsible for:

32 (a) processing applications and renewals for licenses under
33 this section; and

34 (b) performing other services that the director determines are
35 necessary for the orderly administration of the department's
36 licensing system under this article.

37 (11) The director's authority to designate an automated central
38 licensing system and repository under subsection (10) is subject to

1 the following:

2 (a) The director or the director's designee may not require
3 any person exempt from licensure under this article, or any
4 employee or agent of an exempt person, to:

5 (i) submit information to; or

6 (ii) participate in;

7 the automated central licensing system and repository.

8 (b) Information stored in the automated central licensing
9 system and repository is subject to the confidentiality
10 provisions of IC 28-1-2-30 and IC 5-14-3. A person may not:

11 (i) obtain information from the automated central licensing
12 system and repository, unless the person is authorized to
13 do so by statute;

14 (ii) initiate any civil action based on information obtained
15 from the automated central licensing system if the
16 information is not otherwise available to the person under
17 any other state law; or

18 (iii) initiate any civil action based on information obtained
19 from the automated central licensing system if the person
20 could not have initiated the action based on information
21 otherwise available to the person under any other state
22 law.

23 (c) Documents, materials, and other forms of information in
24 the control or possession of the automated central licensing
25 system and repository that are confidential under
26 IC 28-1-2-30 and that are:

27 (i) furnished by the director, the director's designee, or a
28 licensee; or

29 (ii) otherwise obtained by the automated central licensing
30 system and repository;

31 are confidential and privileged by law and are not subject to
32 inspection under IC 5-14-3, subject to subpoena, subject to
33 discovery, or admissible in evidence in any civil action.
34 However, the director or the director's designee may use the
35 documents, materials, or other information available to the
36 director or the director's designee in furtherance of any
37 action brought in connection with the director's duties under
38 this article.

(d) Disclosure of documents, materials, and information:

(i) to the director or the director's designee; or

(ii) by the director or the director's designee;

under this subsection does not result in a waiver of any applicable privilege or claim of confidentiality with respect to the documents, materials, or information.

(e) Information provided to the automated central licensing system and repository is subject to IC 4-1-11.

(f) This subsection does not limit or impair a person's right to:

(i) obtain information;

(ii) use information as evidence in a civil action or proceeding; or

(iii) use information to initiate a civil action or proceeding; if the information may be obtained from the director or the director's designee under any law.

(g) The director may require a licensee required to submit information to the automated central licensing system and repository to pay a processing fee considered reasonable by the director.

Sec. 403. (1) A license issued by the department authorizing a person to engage in first lien mortgage transactions under this article may be revoked by the department if the person fails to:

(a) file any renewal form required by the department; or

(b) pay any license renewal fee described under section 402 of this chapter;

not later than sixty (60) days after the due date.

(2) A person whose license is revoked under this section may do either of the following:

(a) Pay all delinquent fees and apply for a new license.

(b) Appeal the revocation to the department for an administrative review under IC 4-21.5-3. Pending the decision resulting from the hearing under IC 4-21.5-3 concerning the license revocation, the license remains in force.

Sec. 404. (1) The department may issue to a person licensed to engage in first lien mortgage transactions an order to show cause why the person's license should not be revoked or suspended for a period determined by the department. The order must state the place and time for a meeting with the department that is not less

1 than ten (10) days from the date of the order. After the meeting,
2 the department shall revoke or suspend the license if the
3 department finds that:

4 (a) the licensee has repeatedly and willfully violated:

5 (i) this article or any rule or order lawfully adopted or
6 issued under this article; or

7 (ii) any other state or federal law, regulation, or rule
8 applicable to first lien mortgage transactions; or

9 (b) facts or conditions exist which would clearly have justified
10 the department in refusing to grant a license had the facts or
11 conditions been known to exist at the time the application for
12 the license was made.

13 (2) Except as provided in section 403 of this chapter, a
14 revocation or suspension of a license is not authorized under this
15 article unless before instituting proceedings to suspend or revoke
16 the license, the department gives notice to the licensee of the
17 conduct or facts that warrant the intended action, and the licensee
18 is given an opportunity to show compliance with all lawful
19 requirements for retention of the license.

20 (3) If the department finds that probable cause for revocation
21 of a license exists and that enforcement of this article requires
22 immediate suspension of the license pending investigation, the
23 department may, after a hearing with the licensee upon five (5)
24 days written notice to the licensee, enter an order suspending the
25 license for not more than thirty (30) days.

26 (4) Whenever the department revokes or suspends a license, the
27 department shall enter an order to that effect and notify the
28 licensee of the revocation or suspension. Not later than five (5) days
29 after the entry of the order the department shall deliver to the
30 licensee a copy of the order and the findings supporting the order.

31 (5) Any person holding a license to engage in first lien mortgage
32 transactions may relinquish the license by notifying the
33 department in writing of the relinquishment. However, a
34 relinquishment under this paragraph does not affect the person's
35 liability for acts previously committed and coming within the scope
36 of this article.

37 (6) A revocation, suspension, or relinquishment of a license does
38 not impair or affect the obligation of any preexisting lawful

1 contract between:

2 (a) the person whose license has been revoked, suspended, or
3 relinquished; and

4 (b) any debtor.

5 (7) The department may reinstate a license, terminate a
6 suspension, or grant a new license to a person whose license has
7 been revoked or suspended if the director determines that, at the
8 time the determination is made, there is no fact or condition that
9 exists that clearly would justify the department in refusing to grant
10 a license.

11 (8) If the director:

12 (a) has just cause to believe an emergency exists from which
13 it is necessary to protect the interests of the public; or

14 (b) determines that a license was obtained for the benefit of,
15 or on behalf of, a person who does not qualify for a license;

16 the director may proceed with the revocation of the license under
17 IC 4-21.5-3-6.

18 Sec. 405. (1) Every licensee shall maintain records in a manner
19 that will enable the department to determine whether the licensee
20 is complying with this Article. The record keeping system of a
21 licensee is sufficient if the licensee makes the required information
22 reasonably available. The department shall determine the
23 sufficiency of the records and whether the licensee has made the
24 required information reasonably available. The department shall
25 be given free access to the records wherever the records are
26 located. Records concerning any first lien mortgage transaction
27 shall be retained for two (2) years after the making of the final
28 entry relating to the transaction, but in the case of a revolving first
29 lien mortgage transaction, the two (2) years required under this
30 subsection is measured from the date of each entry relating to the
31 transaction.

32 (2) A licensee shall file with the department financial statements
33 relating to all first lien mortgage transactions originated by the
34 licensee. The licensee shall file the financial statements as required
35 by the department, but not more frequently than annually, in the
36 form prescribed by the department.

37 (3) A licensee shall file notification with the department if the
38 licensee:

- (a) has a change in name, address, or any of its principals;
- (b) opens a new branch, closes an existing branch, or relocates an existing branch;
- (c) files for bankruptcy or reorganization; or
- (d) is subject to revocation or suspension proceedings by a state or governmental authority with regard to the licensee's activities;

not later than thirty (30) days after the date of the event described in this subsection.

(4) A licensee shall file notification with the department if a key officer or director of the licensee:

- (a) is under indictment for a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction; or
- (b) has been convicted of or pleaded guilty or nolo contendere to a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction;

not later than thirty (30) days after the date of the event described in this subsection.

Sec. 501. A creditor in a first lien mortgage transaction shall comply with IC 6-1.1-12-43, to the extent applicable.

Sec. 502. (1) A violation by a creditor in a first lien mortgage transaction of Section 125 of the Federal Consumer Credit Protection Act (15 U.S.C. 1635) (concerning a debtor's right to rescind a transaction) constitutes a violation of this article. A creditor may not accrue interest during the period when a first lien mortgage transaction may be rescinded under Section 125 of the Federal Consumer Protection Act (15 U.S.C. 1635).

(2) A creditor must make available for disbursement the proceeds of a transaction subject to subsection (1) on the later of:

- (a) the date the creditor is reasonably satisfied that the debtor has not rescinded the transaction; or
- (b) the first business day after the expiration of the rescission period under subsection (1).

Chapter 3. Administration

Sec. 101. This chapter shall be known and may be cited as the First Lien Mortgage Lending Act - Administration.

Sec. 102. This chapter applies to a person that regularly engages

1 as a creditor in first lien mortgage transactions in Indiana.

2 Sec. 103. (1) In addition to other powers granted by this article,
3 the department within the limitations provided by law may:

4 (a) receive and act on complaints, take action designed to
5 obtain voluntary compliance with this article, or commence
6 proceedings on the department's own initiative;

7 (b) counsel persons and groups on their rights and duties
8 under this article;

9 (c) establish programs for the education of consumers with
10 respect to credit practices and problems;

11 (d) make studies appropriate to effectuate the purposes and
12 policies of this article and make the results available to the
13 public;

14 (e) adopt, amend, and repeal rules, orders, policies, and forms
15 to carry out the provisions of this article;

16 (f) maintain more than one (1) office within Indiana; and

17 (g) appoint any necessary attorneys, hearing examiners,
18 clerks, and other employees and agents and fix their
19 compensation, and authorize attorneys appointed under this
20 section to appear for and represent the department in court.

21 (2) Liability may not be imposed under this article for an act
22 done or omitted in conformity with a rule, written notice, written
23 opinion, written interpretation, or written directive of the
24 department notwithstanding the fact that after the act is done or
25 omitted the rule, written notice, written opinion, written
26 interpretation, or written directive may be:

27 (a) amended or repealed; or

28 (b) determined by judicial or other authority to be invalid;
29 for any reason.

30 Sec. 104. (1) In administering this article and in order to
31 determine whether the provisions of this article are being complied
32 with by persons engaging in acts subject to this article, the
33 department may examine the records of persons and may make
34 investigations of persons as may be necessary to determine
35 compliance. Records subject to examination under this section
36 include the following:

37 (a) Training, operating, and policy manuals.

38 (b) Minutes of:

- 1 (i) management meetings; and
2 (ii) other meetings.
- 3 (c) Financial records, credit files, and data bases.
- 4 (d) Other records that the department determines are
5 necessary to perform its investigation or examination.
- 6 The department may also administer oaths or affirmations,
7 subpoena witnesses, compel the attendance of witnesses, adduce
8 evidence, and require the production of any matter which is
9 relevant to an investigation. The department shall determine the
10 sufficiency of the records maintained and whether the person has
11 made the required information reasonably available. The records
12 concerning any transaction subject to this article shall be retained
13 for two (2) years after the making of the final entry relating to the
14 first lien mortgage transaction, but in the case of a revolving first
15 lien mortgage transaction the two (2) year period is measured from
16 the date of each entry.
- 17 (2) The department's examination and investigatory authority
18 under this article includes the following:
- 19 (a) The authority to require a creditor to refund overcharges
20 resulting from the creditor's noncompliance with the terms of
21 a first lien mortgage transaction.
- 22 (b) The authority to require a creditor to comply with the
23 penalty provisions set forth in IC 24-4.4-2-201.
- 24 (c) The authority to investigate complaints filed with the
25 department by debtors.
- 26 (3) The department shall be given free access to the records
27 wherever the records are located. If the person's records are
28 located outside Indiana, the records shall be made available to the
29 department at a convenient location within Indiana, or the person
30 shall pay the reasonable and necessary expenses for the
31 department or the department's representative to examine the
32 records where they are maintained. The department may designate
33 comparable officials of the state in which the records are located
34 to inspect the records on behalf of the department.
- 35 (4) Upon a person's failure without lawful excuse to obey a
36 subpoena or to give testimony and upon reasonable notice by the
37 department to all affected persons, the department may apply to
38 any civil court with jurisdiction for an order compelling

1 compliance.

2 (5) The department shall not make public:

3 (a) the name or identity of a person whose acts or conduct the
4 department investigates under this section; or

5 (b) the facts discovered in the investigation.

6 However, this subsection does not apply to civil actions or
7 enforcement proceedings under this article.

8 Sec. 105. Except as otherwise provided, IC 4-21.5-3 governs any
9 action taken by the department under this chapter or
10 IC 24-4.4-2-401 through IC 24-4.4-2-405. IC 4-22-2 applies to the
11 adoption of rules by the department under this article. However,
12 if the department determines that an emergency exists, the
13 department may adopt any rules authorized by this article under
14 IC 4-22-2-37.1.

15 Sec. 106. (1) After notice and hearing, the department may
16 order a creditor or a person acting on the creditor's behalf to cease
17 and desist from engaging in violations of this article. In any civil
18 court with jurisdiction:

19 (a) a respondent aggrieved by an order of the department
20 may obtain judicial review of the order; and

21 (b) the department may obtain an order of the court for the
22 enforcement of the department's order.

23 A proceeding for review or enforcement under this subsection shall
24 be initiated by the filing of a petition in the court. Copies of the
25 petition shall be served upon all parties of record.

26 (2) Not later than thirty (30) days after service of a petition for
27 review upon the department under subsection (1), or within such
28 further time as the court may allow, the department shall transmit
29 to the court the original or a certified copy of the entire record
30 upon which the order that is the subject of the review is based,
31 including any transcript of testimony, which need not be printed.
32 By stipulation of all parties to the review proceeding, the record
33 may be shortened. After conducting a hearing on the matter, the
34 court may:

35 (a) reverse or modify the order if the findings of fact of the
36 department are clearly erroneous in view of the reliable,
37 probative, and substantial evidence in the whole record;

38 (b) grant any temporary relief or restraining order the court

1 considers just; and

2 (c) enter an order:

3 (i) enforcing;

4 (ii) modifying;

5 (iii) enforcing as modified; or

6 (iv) setting aside;

7 in whole or in part, the order of the department; or

8 (d) enter an order remanding the case to the department for
9 further proceedings.

10 (3) An objection not urged at the hearing shall not be considered
11 by the court unless the failure to urge the objection is excused for
12 good cause shown. A party may move the court to remand the case
13 to the department in the interest of justice for the purpose of:

14 (a) adducing additional specified and material evidence; and

15 (b) seeking a finding upon such evidence;

16 upon good cause shown for the failure to previously adduce this
17 evidence before the department.

18 (4) The jurisdiction of the court is exclusive and the court's final
19 judgment or decree is subject to review on appeal in the same
20 manner and form and with the same effect as in appeals from a
21 final judgment or decree. The department's copy of the testimony
22 shall be available at reasonable times to all parties for examination
23 without cost.

24 (5) A proceeding for review under this section must be initiated
25 not later than thirty (30) days after a copy of the order of the
26 department is received. If a proceeding is not initiated within the
27 time set forth in this subsection, the department may obtain a
28 decree of a civil court with jurisdiction for enforcement of the
29 department's order upon a showing that:

30 (a) the order was issued in compliance with this section;

31 (b) a proceeding for review was not initiated within the thirty
32 (30) day period prescribed by this subsection; and

33 (c) the respondent is subject to the jurisdiction of the court.

34 (6) With respect to unconscionable agreements or fraudulent or
35 unconscionable conduct by a respondent, the department may not
36 issue an order under this section but may bring a civil action for an
37 injunction under section 111 of this chapter.

38 Sec. 107. If it is claimed that a person has engaged in conduct

1 subject to an order by:

2 (a) the department under section 106(1) of this chapter; or

3 (b) a court under sections 108 through 110 of this chapter;

4 the department may accept an assurance in writing that the person
5 will not engage in the conduct in the future. If a person giving an
6 assurance of discontinuance fails to comply with the terms of the
7 assurance, the assurance is evidence that before the assurance was
8 issued the person engaged in the conduct described in the
9 assurance.

10 Sec. 108. The department may bring a civil action to restrain a
11 person from violating this article and for other appropriate relief.

12 Sec. 109. (1) As used in this section, "deceptive act" means an
13 act or a practice in which a person knowingly or intentionally:

14 (a) makes a material misrepresentation concerning; or

15 (b) conceals material information regarding the terms or
16 conditions of;

17 a first lien mortgage transaction.

18 (2) For purposes of this section, "knowingly" means having
19 actual knowledge at the time of the transaction.

20 (3) The department may bring a civil action to enjoin a
21 deceptive act performed in connection with a first lien mortgage
22 transaction.

23 Sec. 110. With respect to an action brought under:

24 (a) section 108 of this chapter to enjoin violations of this
25 article; or

26 (b) section 109 of this chapter to enjoin deceptive acts;

27 the department may apply to the court for appropriate temporary
28 relief against a respondent, pending final determination of the
29 proceedings. If the court finds after a hearing held upon notice to
30 the respondent that there is reasonable cause to believe that the
31 respondent is engaging in or is likely to engage in the conduct
32 sought to be restrained, the court may grant any temporary relief
33 or restraining order the court considers appropriate.

34 Sec. 111. (1) The department may bring a civil action against a
35 creditor or a person acting on the creditor's behalf to recover a
36 civil penalty for willfully violating this article. If the court finds
37 that the defendant has engaged in a course of repeated and willful
38 violations of this article, the court may assess a civil penalty of not

1 more than five thousand dollars (\$5,000). A civil penalty may not
2 be imposed under this subsection:

3 (a) for violations of this article occurring more than two (2)
4 years before the action is brought; or

5 (b) for making unconscionable agreements or engaging in a
6 course of fraudulent or unconscionable conduct.

7 (2) If the department determines, after notice and opportunity
8 for hearing, that a person has violated this article, the department
9 may, in addition to or instead of all other remedies available under
10 this section, impose upon the person a civil penalty not greater
11 than ten thousand dollars (\$10,000) per violation.

12 Sec. 112. In an action brought by the department under this
13 article, the defendant does not have a right to trial by a jury.

14 Sec. 113. The grant of powers to the department under this
15 article does not affect remedies available to debtors under this
16 article or under other principles of law or equity.

17 Sec. 114. The department may bring an action or a proceeding
18 in a court in a county:

19 (1) in which an act on which the action or proceeding is based
20 occurred;

21 (2) in which the respondent resides or transacts business; or

22 (3) in which the action or proceeding is otherwise authorized
23 by rule or venue laws.

24 Sec. 115. As used in this article, "civil court" means any court
25 in Indiana having jurisdiction of civil cases.

26 SECTION 24. IC 24-4.5-1-301, AS AMENDED BY P.L.57-2006,
27 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
28 JANUARY 1, 2009]: Sec. 301. General Definitions – In addition to
29 definitions appearing in subsequent chapters in this article:

30 (1) "Agreement" means the bargain of the parties in fact as found in
31 their language or by implication from other circumstances, including
32 course of dealing or usage of trade or course of performance.

33 (2) "Agricultural purpose" means a purpose related to the
34 production, harvest, exhibition, marketing, transportation, processing,
35 or manufacture of agricultural products by a natural person who
36 cultivates, plants, propagates, or nurtures the agricultural products;
37 "Agricultural products" includes agricultural, horticultural, viticultural,
38 and dairy products, livestock, wildlife, poultry, bees, forest products,

1 fish and shellfish, and any and all products raised or produced on farms
2 and any processed or manufactured products thereof.

3 (3) "Average daily balance" means the sum of each of the daily
4 balances in a billing cycle divided by the number of days in the billing
5 cycle, and if the billing cycle is a month, the creditor may elect to treat
6 the number of days in each billing cycle as thirty (30).

7 (4) "Closing costs" with respect to a debt secured by an interest in
8 land includes:

9 (a) fees or premiums for title examination, title insurance, or
10 similar purposes, including surveys;

11 (b) fees for preparation of a deed, settlement statement, or other
12 documents;

13 (c) escrows for future payments of taxes and insurance;

14 (d) fees for notarizing deeds and other documents;

15 (e) appraisal fees; and

16 (f) credit reports.

17 (5) "Conspicuous": A term or clause is conspicuous when it is so
18 written that a reasonable person against whom it is to operate ought to
19 have noticed it.

20 (6) "Consumer credit" means credit offered or extended to a
21 consumer primarily for a personal, family, or household purpose.

22 (7) "Credit" means the right granted by a creditor to a debtor to
23 defer payment of debt or to incur debt and defer its payment.

24 (8) "Creditor" means a person:

25 (a) who regularly engages in the extension of consumer credit that
26 is subject to a credit service charge or loan finance charge, as
27 applicable, or is payable **by written agreement in more than**
28 **four (4) installments (not including a down payment); and**

29 (b) to whom the obligation is initially payable, either on the face
30 of the note or contract, or by agreement when there is not a note
31 or contract.

32 (9) "Earnings" means compensation paid or payable for personal
33 services, whether denominated as wages, salary, commission, bonus,
34 or otherwise, and includes periodic payments under a pension or
35 retirement program.

36 (10) "Lender credit card or similar arrangement" means an
37 arrangement or loan agreement, other than a seller credit card, pursuant
38 to which a lender gives a debtor the privilege of using a credit card,

1 letter of credit, or other credit confirmation or identification in
2 transactions out of which debt arises:

- 3 (a) by the lender's honoring a draft or similar order for the
4 payment of money drawn or accepted by the debtor;
5 (b) by the lender's payment or agreement to pay the debtor's
6 obligations; or
7 (c) by the lender's purchase from the obligee of the debtor's
8 obligations.

9 (11) "Official fees" means:

- 10 (a) fees and charges prescribed by law which actually are or will
11 be paid to public officials for determining the existence of or for
12 perfecting, releasing, or satisfying a security interest related to a
13 consumer credit sale, consumer lease, or consumer loan; or
14 (b) premiums payable for insurance in lieu of perfecting a security
15 interest otherwise required by the creditor in connection with the
16 sale, lease, or loan, if the premium does not exceed the fees and
17 charges described in paragraph (a) which would otherwise be
18 payable.

19 (12) "Organization" means a corporation, a government or
20 governmental subdivision, or an agency, a trust, an estate, a
21 partnership, a limited liability company, a cooperative, or an
22 association.

23 (13) "Payable in installments" means that payment is required or
24 permitted by written agreement to be made in more than four (4)
25 installments not including a down payment.

26 (14) "Person" includes a natural person or an individual and an
27 organization.

28 (15) "Person related to" with respect to an individual means:

- 29 (a) the spouse of the individual;
30 (b) a brother, brother-in-law, sister, sister-in-law of the individual;
31 (c) an ancestor or lineal descendants of the individual or the
32 individual's spouse; and
33 (d) any other relative, by blood or marriage, of the individual or
34 the individual's spouse who shares the same home with the
35 individual.

36 "Person related to" with respect to an organization means:

- 37 (a) a person directly or indirectly controlling, controlled by, or
38 under common control with the organization;

(b) an officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization;

(c) the spouse of a person related to the organization; and

(d) a relative by blood or marriage of a person related to the organization who shares the same home with the person.

(16) "Presumed" or "presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(17) "Mortgage transaction" means a transaction in which a first mortgage or a land contract which constitutes a first lien is created or retained against land.

(18) "Regularly engaged" means a person who extends consumer credit more than:

(a) twenty-five (25) times; or

(b) five (5) times for transactions secured by a dwelling; in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year.

(19) "Seller credit card" means an arrangement which gives to a buyer or lessee the privilege of using a credit card, letter of credit, or other credit confirmation or identification for the purpose of purchasing or leasing goods or services from that person, a person related to that person, or from that person and any other person. The term includes a card that is issued by a person, that is in the name of the seller, and that can be used by the buyer or lessee only for purchases or leases at locations of the named seller.

(20) "Supervised financial organization" means a person, other than an insurance company or other organization primarily engaged in an insurance business:

(a) organized, chartered, or holding an authorization certificate under the laws of a state or of the United States which authorizes the person to make loans and to receive deposits, including a savings, share, certificate, or deposit account; and

(b) subject to supervision by an official or agency of a state or of the United States.

(21) "Mortgage servicer" means the last person to whom a mortgagor or the mortgagor's successor in interest has been instructed

1 by a mortgagee to send payments on a loan secured by a mortgage.

2 (22) "Affiliate", with respect to any person subject to this article,
3 means a person that, directly or indirectly, through one (1) or more
4 intermediaries:

5 (a) controls;

6 (b) is controlled by; or

7 (c) is under common control with;

8 the person subject to this article.

9 SECTION 25. IC 24-4.5-2-107 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 107. Definition;
11 "Seller" - Except as otherwise provided, "seller" **means a person**
12 **regularly engaged as a creditor in making consumer credit sales.**
13 **The term** includes an assignee of the seller's right to payment but use
14 of the term does not in itself impose on an assignee any obligation of
15 the seller with respect to events occurring before the assignment.

16 SECTION 26. IC 24-4.5-2-201, AS AMENDED BY P.L.57-2006,
17 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
18 JANUARY 1, 2009]: Sec. 201. Credit Service Charge for Consumer
19 Credit Sales other than Revolving Charge Accounts — (1) With respect
20 to a consumer credit sale, other than a sale pursuant to a revolving
21 charge account, a seller may contract for and receive a credit service
22 charge not exceeding that permitted by this section.

23 (2) The credit service charge, calculated according to the actuarial
24 method, may not exceed the equivalent of the greater of either of the
25 following:

26 (a) the total of:

27 (i) thirty-six percent (36%) per year on that part of the unpaid
28 balances of the amount financed which is three hundred
29 dollars (\$300) or less;

30 (ii) twenty-one percent (21%) per year on that part of the
31 unpaid balances of the amount financed which is more than
32 three hundred dollars (\$300) but does not exceed one thousand
33 dollars (\$1,000); and

34 (iii) fifteen percent (15%) per year on that part of the unpaid
35 balances of the amount financed which is more than one
36 thousand dollars (\$1,000); or

37 (b) twenty-one percent (21%) per year on the unpaid balances of
38 the amount financed.

(3) This section does not limit or restrict the manner of contracting for the credit service charge, whether by way of add-on, discount, or otherwise, so long as the rate of the credit service charge does not exceed that permitted by this section. If the sale is precomputed:

(a) the credit service charge may be calculated on the assumption that all scheduled payments will be made when due; and

(b) the effect of prepayment is governed by the provisions on rebate upon prepayment (IC 24-4.5-2-210).

(4) For the purposes of this section, the term of a sale agreement commences with the date the credit is granted or, if goods are delivered or services performed more than thirty (30) days after that date, with the date of commencement of delivery or performance except as set forth below:

(a) Delays attributable to the customer. Where the customer requests delivery after the thirty (30) day period or where delivery occurs after the thirty (30) day period for a reason attributable to the customer (including but not limited to failure to close on a residence or failure to obtain lease approval), the term of the sale agreement shall commence with the date credit is granted.

(b) Partial Deliveries. Where any portion of the order has been delivered within the thirty (30) day period, the term of the sale agreement shall commence with the date credit is granted.

Differences in the lengths of months are disregarded and a day may be counted as one-thirtieth ($1/30$) of a month. Subject to classifications and differentiations the seller may reasonably establish, a part of a month in excess of fifteen (15) days may be treated as a full month if periods of fifteen (15) days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(5) Subject to classifications and differentiations the seller may reasonably establish, the seller may make the same credit service charge on all amounts financed within a specified range. A credit service charge so made does not violate subsection (2) if:

(a) when applied to the median amount within each range, it does not exceed the maximum permitted by subsection (2); and

(b) when applied to the lowest amount within each range, it does not produce a rate of credit service charge exceeding the rate calculated according to paragraph (a) by more than eight percent

1 (8%) of the rate calculated according to paragraph (a).

2 (6) Notwithstanding subsection (2), the seller may contract for and
3 receive a minimum credit service charge of not more than thirty dollars
4 (\$30). The minimum credit service charge allowed under this
5 subsection may be imposed only if:

6 (a) the ~~borrower~~ **debtor** prepays in full a consumer credit sale,
7 refinancing, or consolidation, regardless of whether the sale,
8 refinancing, or consolidation is precomputed;

9 (b) the sale, refinancing, or consolidation prepaid by the ~~borrower~~
10 **debtor** is subject to a credit service charge that:

11 (i) is contracted for by the parties; and

12 (ii) does not exceed the rate prescribed in subsection (2); and

13 (c) the credit service charge earned at the time of prepayment is
14 less than the minimum credit service charge contracted for under
15 this subsection.

16 (7) The amounts of three hundred dollars (\$300) and one thousand
17 dollars (\$1,000) in subsection (2) are subject to change pursuant to the
18 provisions on adjustment of dollar amounts (IC 24-4.5-1-106).

19 (8) The amount of thirty dollars (\$30) in subsection (6) is subject to
20 change under the provisions on adjustment of dollar amounts (IC
21 24-4.5-1-106). However, notwithstanding IC 24-4.5-1-106(1), the
22 Reference Base Index to be used under this subsection is the Index for
23 October 1992.

24 SECTION 27. IC 24-4.5-2-209 IS AMENDED TO READ AS
25 FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 209. Right to
26 Prepay - (1) Subject to the provisions on rebate upon prepayment (IC
27 24-4.5-2-210), the buyer may prepay in full the unpaid balance of a
28 consumer credit sale, refinancing, or consolidation at any time without
29 penalty.

30 (2) At the time of prepayment of a credit sale not subject to the
31 provisions of rebate upon prepayment (IC 24-4.5-2-210), the total
32 credit service charge, including the prepaid credit service charge, may
33 not exceed the maximum charge allowed under this chapter for the
34 period the credit sale was in effect.

35 (3) The creditor or mortgage servicer shall provide an accurate
36 payoff of the consumer credit sale to the debtor within ten (10)
37 calendar days after the creditor or mortgage servicer receives the
38 debtor's written request for the accurate consumer credit sale payoff

amount. A creditor or mortgage servicer who fails to provide the accurate consumer credit sale payoff amount is liable for:

(A) one hundred dollars (\$100) if an accurate consumer credit sale payoff amount is not provided by the creditor or mortgage servicer within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's first written request; and

(B) the greater of:

(i) one hundred dollars (\$100); or

(ii) the credit service charge that accrues on the sale from the date the creditor or mortgage servicer receives the first written request until the date on which the accurate consumer credit sale payoff amount is provided;

if an accurate consumer credit sale payoff amount is not provided by the creditor or mortgage servicer within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's second written request, and the creditor or mortgage servicer failed to comply with clause (A).

A liability under this subsection is an excess charge under IC 24-4.5-5-202.

(4) As used in this subsection, "mortgage transaction" means a consumer credit sale in which a mortgage, deed of trust, or a land contract that constitutes a lien is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes. This subsection applies to a mortgage transaction with respect to which any installment or minimum payment due is delinquent for at least ten (10) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than ten (10) business days after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than twenty (20) business days after receipt of an offer under this subsection, the creditor, servicer, or creditor's

agent shall respond to the offer with an acceptance or a rejection of the offer. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a mortgage transaction is sold for an amount that is less than the amount of the debtor's outstanding obligation under the mortgage transaction. A creditor or mortgage servicer that fails to respond to an offer within the time prescribed by this subsection is liable:

(a) under the terms set forth in subsection (3), as if the creditor or mortgage servicer had failed to provide a consumer credit sale payoff amount; and

(b) in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

SECTION 28. IC 24-4.5-3-107 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 107. Definitions: "Lender"; "Precomputed"; "Principal" — (1) Except as otherwise provided, "lender" means a person regularly engaged in making consumer loans. The term includes an assignee of the lender's right to payment but use of the term does not in itself impose on an assignee any obligation of the lender with respect to events occurring before the assignment.

(2) A loan, refinancing, or consolidation is "precomputed" if the debt is expressed as a sum comprising the principal and the amount of the loan finance charge computed in advance.

(3) "Principal" of a loan means the total of:

(a) the net amount paid to, receivable by, or paid or payable for the account of the debtor;

(b) the amount of any discount excluded from the loan finance charge (subsection (2) of 24-4.5-3-109); and

(c) to the extent that payment is deferred:

(i) amounts actually paid or to be paid by the lender for registration, certificate of title, or license fees if not included in (a); and

(ii) additional charges permitted by this Chapter (24-4.5-3-202).

SECTION 29. IC 24-4.5-3-201, AS AMENDED BY P.L.57-2006, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 201. Loan Finance Charge for Consumer Loans other than Supervised Loans—(1) Except as provided in

subsections (6) and (8), with respect to a consumer loan other than a supervised loan (IC 24-4.5-3-501), a lender may contract for a loan finance charge, calculated according to the actuarial method, not exceeding twenty-one percent (21%) per year on the unpaid balances of the principal.

(2) This section does not limit or restrict the manner of contracting for the loan finance charge, whether by way of add-on, discount, or otherwise, so long as the rate of the loan finance charge does not exceed that permitted by this section. If the loan is precomputed:

(a) the loan finance charge may be calculated on the assumption that all scheduled payments will be made when due; and

(b) the effect of prepayment is governed by the provisions on rebate upon prepayment (IC 24-4.5-3-210).

(3) For the purposes of this section, the term of a loan commences with the date the loan is made. Differences in the lengths of months are disregarded, and a day may be counted as one-thirtieth ($1/30$) of a month. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of fifteen (15) days may be treated as a full month if periods of fifteen (15) days or less are disregarded and if that procedure is not consistently used to obtain a greater yield than would otherwise be permitted. For purposes of computing average daily balances, the creditor may elect to treat all months as consisting of thirty (30) days.

(4) With respect to a consumer loan made pursuant to a revolving loan account:

(a) the loan finance charge shall be deemed not to exceed the maximum annual percentage rate if the loan finance charge contracted for and received does not exceed a charge in each monthly billing cycle which is one and three-fourths percent ($1\frac{3}{4}\%$) of an amount no greater than:

(i) the average daily balance of the debt;

(ii) the unpaid balance of the debt on the same day of the billing cycle; or

(iii) subject to subsection (5), the median amount within a specified range within which the average daily balance or the unpaid balance of the debt, on the same day of the billing cycle, is included; for the purposes of this subparagraph and subparagraph (ii), a variation of not more than four (4) days

1 from month to month is "the same day of the billing cycle";
 2 (b) if the billing cycle is not monthly, the loan finance charge
 3 shall be deemed not to exceed the maximum annual percentage
 4 rate if the loan finance charge contracted for and received does
 5 not exceed a percentage which bears the same relation to
 6 one-twelfth (1/12) the maximum annual percentage rate as the
 7 number of days in the billing cycle bears to thirty (30); and
 8 (c) notwithstanding subsection (1), if there is an unpaid balance
 9 on the date as of which the loan finance charge is applied, the
 10 lender may contract for and receive a charge not exceeding fifty
 11 cents (\$0.50) if the billing cycle is monthly or longer, or the pro
 12 rata part of fifty cents (\$0.50) which bears the same relation to
 13 fifty cents (\$0.50) as the number of days in the billing cycle bears
 14 to thirty (30) if the billing cycle is shorter than monthly, but no
 15 charge may be made pursuant to this paragraph if the lender has
 16 made an annual charge for the same period as permitted by the
 17 provisions on additional charges (paragraph (c) of subsection (1)
 18 of IC 24-4.5-3-202).

19 (5) Subject to classifications and differentiations, the lender may
 20 reasonably establish and make the same loan finance charge on all
 21 amounts financed within a specified range. A loan finance charge does
 22 not violate subsection (1) if:

23 (a) when applied to the median amount within each range, it does
 24 not exceed the maximum permitted by subsection (1); and
 25 (b) when applied to the lowest amount within each range, it does
 26 not produce a rate of loan finance charge exceeding the rate
 27 calculated according to paragraph (a) by more than eight percent
 28 (8%) of the rate calculated according to paragraph (a).

29 (6) With respect to a consumer loan not made pursuant to a
 30 revolving loan account, the lender may contract for and receive a
 31 minimum loan finance charge of not more than thirty dollars (\$30). The
 32 minimum loan finance charge allowed under this subsection may be
 33 imposed only if:

34 (a) the ~~borrower~~ **debtor** prepays in full a consumer loan,
 35 refinancing, or consolidation, regardless of whether the loan,
 36 refinancing, or consolidation is precomputed;
 37 (b) the loan, refinancing, or consolidation prepaid by the ~~borrower~~
 38 **debtor** is subject to a loan finance charge that:

- 1 (i) is contracted for by the parties; and
- 2 (ii) does not exceed the rate prescribed in subsection (1); and
- 3 (c) the loan finance charge earned at the time of prepayment is
- 4 less than the minimum loan finance charge contracted for under
- 5 this subsection.
- 6 (7) The amount of thirty dollars (\$30) in subsection (6) is subject to
- 7 change under the provisions on adjustment of dollar amounts (IC
- 8 24-4.5-1-106). However, notwithstanding IC 24-4.5-1-106(1), the
- 9 Reference Base Index to be used under this subsection is the Index for
- 10 October 1992.
- 11 (8) In addition to the loan finance charge provided for in this
- 12 section, a lender may contract for the following:
- 13 (a) With respect to a consumer loan that is not made under a
- 14 revolving loan account, a loan origination fee of not more than
- 15 two percent (2%) of the loan amount.
- 16 (b) With respect to a consumer loan that is made under a
- 17 revolving loan account, a loan origination fee of not more than
- 18 two percent (2%) of the line of credit that was contracted for.
- 19 (9) The charges provided for in subsection (8):
- 20 (a) are not subject to refund or rebate;
- 21 (b) are not permitted if a lender makes a settlement charge under
- 22 IC 24-4.5-3-202(d)(ii); and
- 23 (c) are limited to two percent (2%) of the part of the loan that
- 24 does not exceed two thousand dollars (\$2,000), if the loan is not
- 25 primarily secured by an interest in land.
- 26 Notwithstanding subdivision (a), if a lender retains any part of a loan
- 27 origination fee charged on a loan that is paid in full by a new loan from
- 28 the same lender within three (3) months after the date of the prior loan,
- 29 the lender may charge a loan origination fee only on that part of the
- 30 new loan not used to pay the amount due on the prior loan, or in the
- 31 case of a revolving loan, the lender may charge a loan origination fee
- 32 only on the difference between the amount of the existing credit line
- 33 and the increased credit line. This subsection does not prohibit a lender
- 34 from contracting for and receiving a fee for preparing deeds,
- 35 mortgages, reconveyance, and similar documents under
- 36 IC 24-4.5-3-202(d)(ii), in addition to the charges provided for in
- 37 subsection (8).
- 38 SECTION 30. IC 24-4.5-3-209 IS AMENDED TO READ AS

1 FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 209. Right to
 2 Prepay - (1) Subject to the provisions on rebate upon prepayment (IC
 3 24-4.5-3-210), the debtor may prepay in full the unpaid balance of a
 4 consumer loan, refinancing, or consolidation at any time without
 5 penalty. With respect to a consumer loan that is primarily secured by
 6 an interest in land, a lender may contract for a penalty for prepayment
 7 of the loan in full, not to exceed two percent (2%) of any amount
 8 prepaid within sixty (60) days of the date of the prepayment in full,
 9 after deducting all refunds and rebates as of the date of the prepayment.
 10 However, the penalty may not be imposed:

- 11 (a) if the loan is refinanced or consolidated with the same
- 12 creditor;
- 13 (b) for prepayment by proceeds of any insurance or acceleration
- 14 after default; or
- 15 (c) after three (3) years from the contract date.

16 (2) At the time of prepayment of a consumer loan not subject to the
 17 provisions of rebate upon prepayment (IC 24-4.5-3-210), the total
 18 finance charge, including the prepaid finance charge but excluding the
 19 loan origination fee allowed under IC 24-4.5-3-201, may not exceed the
 20 maximum charge allowed under this chapter for the period the loan was
 21 in effect. For the purposes of determining compliance with this
 22 subsection, the total finance charge does not include the following:

- 23 (a) The loan origination fee allowed under IC 24-4.5-3-201.
- 24 (b) The ~~borrower~~ **debtor** paid mortgage broker fee, if any, paid to
- 25 a person who does not control, is not controlled by, or is not under
- 26 common control with, the creditor holding the loan at the time a
- 27 consumer loan is prepaid.

28 (3) The creditor or mortgage servicer shall provide an accurate
 29 payoff of the consumer loan to the debtor within ten (10) calendar days
 30 after the creditor or mortgage servicer receives the debtor's written
 31 request for the accurate consumer loan payoff amount. A creditor or
 32 mortgage servicer who fails to provide the accurate consumer loan
 33 payoff amount is liable for:

- 34 (a) one hundred dollars (\$100) if an accurate consumer loan
- 35 payoff amount is not provided by the creditor or mortgage
- 36 servicer within ten (10) calendar days after the creditor or
- 37 mortgage servicer receives the debtor's first written request; and
- 38 (b) the greater of:

- 1 (i) one hundred dollars (\$100); or
- 2 (ii) the loan finance charge that accrues on the loan from the
- 3 date the creditor or mortgage servicer receives the first written
- 4 request until the date on which the accurate consumer loan
- 5 payoff amount is provided;
- 6 if an accurate consumer loan payoff amount is not provided by the
- 7 creditor or mortgage servicer within ten (10) calendar days after
- 8 the creditor or mortgage servicer receives the debtor's second
- 9 written request, and the creditor or mortgage servicer failed to
- 10 comply with subdivision (a).

11 A liability under this subsection is an excess charge under
 12 IC 24-4.5-5-202.

13 **(4) As used in this subsection, "mortgage transaction" means a**
 14 **consumer credit loan in which a mortgage, deed of trust, or a land**
 15 **contract that constitutes a lien is created or retained against land**
 16 **upon which there is a dwelling that is or will be used by the debtor**
 17 **primarily for personal, family, or household purposes. This**
 18 **subsection applies to a mortgage transaction with respect to which**
 19 **any installment or minimum payment due is delinquent for at least**
 20 **ten (10) days. The creditor, servicer, or the creditor's agent shall**
 21 **acknowledge a written offer made in connection with a proposed**
 22 **short sale not later than ten (10) business days after the date of the**
 23 **offer if the offer complies with the requirements for a qualified**
 24 **written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor,**
 25 **servicer, or creditor's agent is required to acknowledge a written**
 26 **offer made in connection with a proposed short sale from a third**
 27 **party acting on behalf of the debtor only if the debtor has provided**
 28 **written authorization for the creditor, servicer, or creditor's agent**
 29 **to do so. Not later than twenty (20) business days after receipt of**
 30 **an offer under this subsection, the creditor, servicer, or creditor's**
 31 **agent shall respond to the offer with an acceptance or a rejection**
 32 **of the offer. As used in this subsection, "short sale" means a**
 33 **transaction in which the property that is the subject of a mortgage**
 34 **transaction is sold for an amount that is less than the amount of the**
 35 **debtor's outstanding obligation under the mortgage transaction. A**
 36 **creditor or mortgage servicer that fails to respond to an offer**
 37 **within the time prescribed by this subsection is liable:**

- 38 (a) under the terms set forth in subsection (3), as if the

1 **creditor or mortgage servicer had failed to provide a**
 2 **consumer credit loan payoff amount; and**
 3 **(b) in accordance with 12 U.S.C. 2605(f) in any action brought**
 4 **under that section.**

5 SECTION 31. IC 24-4.5-3-508, AS AMENDED BY P.L.57-2006,
 6 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JANUARY 1, 2009]: Sec. 508. Loan Finance Charge for Supervised
 8 Loans – (1) With respect to a supervised loan, including a loan
 9 pursuant to a revolving loan account, a supervised lender may contract
 10 for and receive a loan finance charge not exceeding that permitted by
 11 this section.

12 (2) The loan finance charge, calculated according to the actuarial
 13 method, may not exceed the equivalent of the greater of either of the
 14 following:

15 (a) the total of:

16 (i) thirty-six percent (36%) per year on that part of the unpaid
 17 balances of the principal which is three hundred dollars (\$300)
 18 or less;

19 (ii) twenty-one percent (21%) per year on that part of the
 20 unpaid balances of the principal which is more than three
 21 hundred dollars (\$300) but does not exceed one thousand
 22 dollars (\$1,000); and

23 (iii) fifteen percent (15%) per year on that part of the unpaid
 24 balances of the principal which is more than one thousand
 25 dollars (\$1000); or

26 (b) twenty-one percent (21%) per year on the unpaid balances of
 27 the principal.

28 (3) This section does not limit or restrict the manner of contracting
 29 for the loan finance charge, whether by way of add-on, discount, or
 30 otherwise, so long as the rate of the loan finance charge does not
 31 exceed that permitted by this section. If the loan is precomputed:

32 (a) the loan finance charge may be calculated on the assumption
 33 that all scheduled payments will be made when due; and

34 (b) the effect of prepayment is governed by the provisions on
 35 rebate upon prepayment (IC 24-4.5-3-210).

36 (4) The term of a loan for the purposes of this section commences
 37 on the date the loan is made. Differences in the lengths of months are
 38 disregarded, and a day may be counted as one-thirtieth (1/30) of a

month. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of fifteen (15) days may be treated as a full month if periods of fifteen (15) days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(5) Subject to classifications and differentiations, the lender may reasonably establish and make the same loan finance charge on all principal amounts within a specified range. A loan finance charge does not violate subsection (2) if:

(a) when applied to the median amount within each range, it does not exceed the maximum permitted in subsection (2); and

(b) when applied to the lowest amount within each range, it does not produce a rate of loan finance charge exceeding the rate calculated according to paragraph (a) by more than eight percent (8%) of the rate calculated according to paragraph (a).

(6) The amounts of three hundred dollars (\$300) and one thousand dollars (\$1,000) in subsection (2) and thirty dollars (\$30) in subsection (7) are subject to change pursuant to the provisions on adjustment of dollar amounts (IC 24-4.5-1-106). For the adjustment of the amount of thirty dollars (\$30), the Reference Base Index to be used is the Index for October 1992.

(7) With respect to a supervised loan not made pursuant to a revolving loan account, the lender may contract for and receive a minimum loan finance charge of not more than thirty dollars (\$30). The minimum loan finance charge allowed under this subsection may be imposed only if:

(a) the ~~borrower~~ **debtor** prepays in full a consumer loan, refinancing, or consolidation, regardless of whether the loan, refinancing, or consolidation is precomputed;

(b) the loan, refinancing, or consolidation prepaid by the ~~borrower~~ **debtor** is subject to a loan finance charge that:

(i) is contracted for by the parties; and

(ii) does not exceed the rate prescribed in subsection (2); and

(c) the loan finance charge earned at the time of prepayment is less than the minimum loan finance charge contracted for under this subsection.

SECTION 32. IC 24-5-0.5-2, AS AMENDED BY P.L.1-2007, SECTION 165, IS AMENDED TO READ AS FOLLOWS

[EFFECTIVE JULY 1, 2008]: Sec. 2. (a) As used in this chapter:

(1) "Consumer transaction" means a sale, lease, assignment, award by chance, or other disposition of an item of personal property, real property, a service, or an intangible, except securities and policies or contracts of insurance issued by corporations authorized to transact an insurance business under the laws of the state of Indiana, with or without an extension of credit, to a person for purposes that are primarily personal, familial, charitable, agricultural, or household, or a solicitation to supply any of these things. However, the term includes the following:

(A) A transfer of structured settlement payment rights under IC 34-50-2.

(B) An unsolicited advertisement sent to a person by telephone facsimile machine offering a sale, lease, assignment, award by chance, or other disposition of an item of personal property, real property, a service, or an intangible.

(2) "Person" means an individual, corporation, the state of Indiana or its subdivisions or agencies, business trust, estate, trust, partnership, association, nonprofit corporation or organization, or cooperative or any other legal entity.

(3) "Supplier" means the following:

(A) A seller, lessor, assignor, or other person who regularly engages in or solicits consumer transactions, including soliciting a consumer transaction by using a telephone facsimile machine to transmit an unsolicited advertisement. The term includes a manufacturer, wholesaler, or retailer, whether or not the person deals directly with the consumer.

(B) A person who contrives, prepares, sets up, operates, publicizes by means of advertisements, or promotes a pyramid promotional scheme.

(C) With respect to a deceptive act described in section 3(h) of this chapter, a creditor (as defined in IC 24-9-2-6).

(4) "Subject of a consumer transaction" means the personal property, real property, services, or intangibles offered or furnished in a consumer transaction.

(5) "Cure" as applied to a deceptive act, means either:

(A) to offer in writing to adjust or modify the consumer

- 1 transaction to which the act relates to conform to the
 2 reasonable expectations of the consumer generated by such
 3 deceptive act and to perform such offer if accepted by the
 4 consumer; or
- 5 (B) to offer in writing to rescind such consumer transaction
 6 and to perform such offer if accepted by the consumer.
- 7 The term includes an offer in writing of one (1) or more items of
 8 value, including monetary compensation, that the supplier
 9 delivers to a consumer or a representative of the consumer if
 10 accepted by the consumer.
- 11 (6) "Offer to cure" as applied to a deceptive act is a cure that:
- 12 (A) is reasonably calculated to remedy a loss claimed by the
 13 consumer; and
- 14 (B) includes a minimum additional amount that is the greater
 15 of:
- 16 (i) ten percent (10%) of the value of the remedy under
 17 clause (A), but not more than four thousand dollars
 18 (\$4,000); or
- 19 (ii) five hundred dollars (\$500);
- 20 as compensation for attorney's fees, expenses, and other costs
 21 that a consumer may incur in relation to the deceptive act.
- 22 (7) "Uncured deceptive act" means a deceptive act:
- 23 (A) with respect to which a consumer who has been damaged
 24 by such act has given notice to the supplier under section 5(a)
 25 of this chapter; and
- 26 (B) either:
- 27 (i) no offer to cure has been made to such consumer within
 28 thirty (30) days after such notice; or
- 29 (ii) the act has not been cured as to such consumer within a
 30 reasonable time after the consumer's acceptance of the offer
 31 to cure.
- 32 (8) "Incurable deceptive act" means a deceptive act done by a
 33 supplier as part of a scheme, artifice, or device with intent to
 34 defraud or mislead. The term includes a failure of a transferee of
 35 structured settlement payment rights to timely provide a true and
 36 complete disclosure statement to a payee as provided under
 37 IC 34-50-2 in connection with a direct or indirect transfer of
 38 structured settlement payment rights.

(9) "Pyramid promotional scheme" means any program utilizing a pyramid or chain process by which a participant in the program gives a valuable consideration exceeding one hundred dollars (\$100) for the opportunity or right to receive compensation or other things of value in return for inducing other persons to become participants for the purpose of gaining new participants in the program. The term does not include ordinary sales of goods or services to persons who are not purchasing in order to participate in such a scheme.

(10) "Promoting a pyramid promotional scheme" means:

(A) inducing or attempting to induce one (1) or more other persons to become participants in a pyramid promotional scheme; or

(B) assisting another in promoting a pyramid promotional scheme.

(11) "Elderly person" means an individual who is at least sixty-five (65) years of age.

(12) "Telephone facsimile machine" means equipment that has the capacity to transcribe text or images, or both, from:

(A) paper into an electronic signal and to transmit that signal over a regular telephone line; or

(B) an electronic signal received over a regular telephone line onto paper.

(13) "Unsolicited advertisement" means material advertising the commercial availability or quality of:

(A) property;

(B) goods; or

(C) services;

that is transmitted to a person without the person's prior express invitation or permission, in writing or otherwise.

(b) As used in section 3(a)(15) of this chapter:

(1) "Directory assistance" means the disclosure of telephone number information in connection with an identified telephone service subscriber by means of a live operator or automated service.

(2) "Local telephone directory" refers to a telephone classified advertising directory or the business section of a telephone directory that is distributed by a telephone company or directory

1 publisher to subscribers located in the local exchanges contained
2 in the directory. The term includes a directory that includes
3 listings of more than one (1) telephone company.

4 (3) "Local telephone number" refers to a telephone number that
5 has the three (3) number prefix used by the provider of telephone
6 service for telephones physically located within the area covered
7 by the local telephone directory in which the number is listed. The
8 term does not include long distance numbers or 800-, 888-, or
9 900- exchange numbers listed in a local telephone directory.

10 SECTION 33. IC 24-5-0.5-3, AS AMENDED BY P.L.85-2006,
11 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2008]: Sec. 3. (a) The following acts or representations as to
13 the subject matter of a consumer transaction, made orally, in writing,
14 or by electronic communication, by a supplier, are deceptive acts:

15 (1) That such subject of a consumer transaction has sponsorship,
16 approval, performance, characteristics, accessories, uses, or
17 benefits it does not have which the supplier knows or should
18 reasonably know it does not have.

19 (2) That such subject of a consumer transaction is of a particular
20 standard, quality, grade, style, or model, if it is not and if the
21 supplier knows or should reasonably know that it is not.

22 (3) That such subject of a consumer transaction is new or unused,
23 if it is not and if the supplier knows or should reasonably know
24 that it is not.

25 (4) That such subject of a consumer transaction will be supplied
26 to the public in greater quantity than the supplier intends or
27 reasonably expects.

28 (5) That replacement or repair constituting the subject of a
29 consumer transaction is needed, if it is not and if the supplier
30 knows or should reasonably know that it is not.

31 (6) That a specific price advantage exists as to such subject of a
32 consumer transaction, if it does not and if the supplier knows or
33 should reasonably know that it does not.

34 (7) That the supplier has a sponsorship, approval, or affiliation in
35 such consumer transaction the supplier does not have, and which
36 the supplier knows or should reasonably know that the supplier
37 does not have.

38 (8) That such consumer transaction involves or does not involve

- 1 a warranty, a disclaimer of warranties, or other rights, remedies,
2 or obligations, if the representation is false and if the supplier
3 knows or should reasonably know that the representation is false.
- 4 (9) That the consumer will receive a rebate, discount, or other
5 benefit as an inducement for entering into a sale or lease in return
6 for giving the supplier the names of prospective consumers or
7 otherwise helping the supplier to enter into other consumer
8 transactions, if earning the benefit, rebate, or discount is
9 contingent upon the occurrence of an event subsequent to the time
10 the consumer agrees to the purchase or lease.
- 11 (10) That the supplier is able to deliver or complete the subject of
12 the consumer transaction within a stated period of time, when the
13 supplier knows or should reasonably know the supplier could not.
14 If no time period has been stated by the supplier, there is a
15 presumption that the supplier has represented that the supplier
16 will deliver or complete the subject of the consumer transaction
17 within a reasonable time, according to the course of dealing or the
18 usage of the trade.
- 19 (11) That the consumer will be able to purchase the subject of the
20 consumer transaction as advertised by the supplier, if the supplier
21 does not intend to sell it.
- 22 (12) That the replacement or repair constituting the subject of a
23 consumer transaction can be made by the supplier for the estimate
24 the supplier gives a customer for the replacement or repair, if the
25 specified work is completed and:
- 26 (A) the cost exceeds the estimate by an amount equal to or
27 greater than ten percent (10%) of the estimate;
- 28 (B) the supplier did not obtain written permission from the
29 customer to authorize the supplier to complete the work even
30 if the cost would exceed the amounts specified in clause (A);
- 31 (C) the total cost for services and parts for a single transaction
32 is more than seven hundred fifty dollars (\$750); and
- 33 (D) the supplier knew or reasonably should have known that
34 the cost would exceed the estimate in the amounts specified in
35 clause (A).
- 36 (13) That the replacement or repair constituting the subject of a
37 consumer transaction is needed, and that the supplier disposes of
38 the part repaired or replaced earlier than seventy-two (72) hours

- 1 after both:
- 2 (A) the customer has been notified that the work has been
- 3 completed; and
- 4 (B) the part repaired or replaced has been made available for
- 5 examination upon the request of the customer.
- 6 (14) Engaging in the replacement or repair of the subject of a
- 7 consumer transaction if the consumer has not authorized the
- 8 replacement or repair, and if the supplier knows or should
- 9 reasonably know that it is not authorized.
- 10 (15) The act of misrepresenting the geographic location of the
- 11 supplier by listing a fictitious business name or an assumed
- 12 business name (as described in IC 23-15-1) in a local telephone
- 13 directory if:
- 14 (A) the name misrepresents the supplier's geographic location;
- 15 (B) the listing fails to identify the locality and state of the
- 16 supplier's business;
- 17 (C) calls to the local telephone number are routinely forwarded
- 18 or otherwise transferred to a supplier's business location that
- 19 is outside the calling area covered by the local telephone
- 20 directory; and
- 21 (D) the supplier's business location is located in a county that
- 22 is not contiguous to a county in the calling area covered by the
- 23 local telephone directory.
- 24 (16) The act of listing a fictitious business name or assumed
- 25 business name (as described in IC 23-15-1) in a directory
- 26 assistance data base if:
- 27 (A) the name misrepresents the supplier's geographic location;
- 28 (B) calls to the local telephone number are routinely forwarded
- 29 or otherwise transferred to a supplier's business location that
- 30 is outside the local calling area; and
- 31 (C) the supplier's business location is located in a county that
- 32 is not contiguous to a county in the local calling area.
- 33 (17) That the supplier violated IC 24-3-4 concerning cigarettes for
- 34 import or export.
- 35 (18) That a supplier knowingly sells or resells a product to a
- 36 consumer if the product has been recalled, whether by the order
- 37 of a court or a regulatory body, or voluntarily by the
- 38 manufacturer, distributor, or retailer unless the product has been

1 repaired or modified to correct the defect that was the subject of
2 the recall.

3 (19) That the supplier violated 47 U.S.C. 227, including any rules
4 or regulations issued under 47 U.S.C. 227.

5 (b) Any representations on or within a product or its packaging or
6 in advertising or promotional materials which would constitute a
7 deceptive act shall be the deceptive act both of the supplier who places
8 such representation thereon or therein, or who authored such materials,
9 and such other suppliers who shall state orally or in writing that such
10 representation is true if such other supplier shall know or have reason
11 to know that such representation was false.

12 (c) If a supplier shows by a preponderance of the evidence that an
13 act resulted from a bona fide error notwithstanding the maintenance of
14 procedures reasonably adopted to avoid the error, such act shall not be
15 deceptive within the meaning of this chapter.

16 (d) It shall be a defense to any action brought under this chapter that
17 the representation constituting an alleged deceptive act was one made
18 in good faith by the supplier without knowledge of its falsity and in
19 reliance upon the oral or written representations of the manufacturer,
20 the person from whom the supplier acquired the product, any testing
21 organization, or any other person provided that the source thereof is
22 disclosed to the consumer.

23 (e) For purposes of subsection (a)(12), a supplier that provides
24 estimates before performing repair or replacement work for a customer
25 shall give the customer a written estimate itemizing as closely as
26 possible the price for labor and parts necessary for the specific job
27 before commencing the work.

28 (f) For purposes of subsection (a)(15), a telephone company or other
29 provider of a telephone directory or directory assistance service or its
30 officer or agent is immune from liability for publishing the listing of a
31 fictitious business name or assumed business name of a supplier in its
32 directory or directory assistance data base unless the telephone
33 company or other provider of a telephone directory or directory
34 assistance service is the same person as the supplier who has
35 committed the deceptive act.

36 (g) For purposes of subsection (a)(18), it is an affirmative defense
37 to any action brought under this chapter that the product has been
38 altered by a person other than the defendant to render the product

1 completely incapable of serving its original purpose.

2 **(h) In addition to the acts set forth in subsection (a), a violation**
 3 **of IC 24-9 (concerning home loans) is a deceptive act under this**
 4 **chapter.**

5 SECTION 34. IC 24-5-0.5-4, AS AMENDED BY P.L.85-2006,
 6 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2008]: Sec. 4. (a) **Except as provided in subsection (l),** a
 8 person relying upon an uncured or incurable deceptive act may bring
 9 an action for the damages actually suffered as a consumer as a result of
 10 the deceptive act or five hundred dollars (\$500), whichever is greater.
 11 The court may increase damages for a willful deceptive act in an
 12 amount that does not exceed the greater of:

13 (1) three (3) times the actual damages of the consumer suffering
 14 the loss; or

15 (2) one thousand dollars (\$1,000).

16 Except as provided in subsection (j), the court may award reasonable
 17 attorney fees to the party that prevails in an action under this
 18 subsection. **Except for a deceptive act described in section 3(h) of**
 19 **this chapter, and except for purchases of time shares and camping**
 20 **club memberships,** this subsection does not apply to a consumer
 21 transaction in real property, including a claim or action involving a
 22 construction defect (as defined in IC 32-27-3-1(5)) brought against a
 23 construction professional (as defined in IC 32-27-3-1(4)). ~~except for~~
 24 ~~purchases of time shares and camping club memberships.~~ This
 25 subsection also does not apply to a violation of IC 24-4.7, IC 24-5-12,
 26 or IC 24-5-14. Actual damages awarded to a person under this section
 27 have priority over any civil penalty imposed under this chapter.

28 (b) Any person who is entitled to bring an action under subsection
 29 (a) on the person's own behalf against a supplier for damages for a
 30 deceptive act may bring a class action against such supplier on behalf
 31 of any class of persons of which that person is a member and which has
 32 been damaged by such deceptive act, subject to and under the Indiana
 33 Rules of Trial Procedure governing class actions, except as herein
 34 expressly provided. Except as provided in subsection (j), the court may
 35 award reasonable attorney fees to the party that prevails in a class
 36 action under this subsection, provided that such fee shall be determined
 37 by the amount of time reasonably expended by the attorney and not by
 38 the amount of the judgment, although the contingency of the fee may

1 be considered. Any money or other property recovered in a class action
 2 under this subsection which cannot, with due diligence, be restored to
 3 consumers within one (1) year after the judgment becomes final shall
 4 be returned to the party depositing the same. **Except for a deceptive**
 5 **act described in section 3(h) of this chapter, and except for**
 6 **purchases of time shares and camping club memberships,** this
 7 subsection does not apply to a consumer transaction in real property.
 8 ~~except for purchases of time shares and camping club memberships.~~
 9 Actual damages awarded to a class have priority over any civil penalty
 10 imposed under this chapter.

11 (c) The attorney general may bring an action to enjoin a deceptive
 12 act, **including a deceptive act described in section 3(h) of this**
 13 **chapter.** However, **with respect to all other consumer transactions**
 14 **involving real property,** the attorney general may seek to enjoin
 15 patterns of incurable deceptive acts. ~~with respect to consumer~~
 16 ~~transactions in real property.~~ In addition, the court may:

- 17 (1) issue an injunction;
- 18 (2) order the supplier to make payment of the money unlawfully
 19 received from the aggrieved consumers to be held in escrow for
 20 distribution to aggrieved consumers;
- 21 (3) order the supplier to pay to the state the reasonable costs of
 22 the attorney general's investigation and prosecution related to the
 23 action; and
- 24 (4) provide for the appointment of a receiver.

25 (d) In an action under subsection (a), (b), or (c), the court may void
 26 or limit the application of contracts or clauses resulting from deceptive
 27 acts and order restitution to be paid to aggrieved consumers.

28 (e) In any action under subsection (a) or (b), upon the filing of the
 29 complaint or on the appearance of any defendant, claimant, or any
 30 other party, or at any later time, the trial court, the supreme court, or the
 31 court of appeals may require the plaintiff, defendant, claimant, or any
 32 other party or parties to give security, or additional security, in such
 33 sum as the court shall direct to pay all costs, expenses, and
 34 disbursements that shall be awarded against that party or which that
 35 party may be directed to pay by any interlocutory order by the final
 36 judgment or on appeal.

37 (f) **Except as provided in subsection (l),** any person who violates
 38 the terms of an injunction issued under subsection (c) shall forfeit and

1 pay to the state a civil penalty of not more than fifteen thousand dollars
 2 (\$15,000) per violation. For the purposes of this section, the court
 3 issuing an injunction shall retain jurisdiction, the cause shall be
 4 continued, and the attorney general acting in the name of the state may
 5 petition for recovery of civil penalties. Whenever the court determines
 6 that an injunction issued under subsection (c) has been violated, the
 7 court shall award reasonable costs to the state.

8 (g) If a court finds any person has knowingly violated section 3 or
 9 10 of this chapter, other than section 3(a)(19) **or 3(h)** of this chapter,
 10 the attorney general, in an action pursuant to subsection (c), may
 11 recover from the person on behalf of the state a civil penalty of a fine
 12 not exceeding five thousand dollars (\$5,000) per violation.

13 (h) If a court finds that a person has violated section 3(a)(19) of this
 14 chapter, the attorney general, in an action under subsection (c), may
 15 recover from the person on behalf of the state a civil penalty as follows:

16 (1) For a knowing or intentional violation, one thousand five
 17 hundred dollars (\$1,500).

18 (2) For a violation other than a knowing or intentional violation,
 19 five hundred dollars (\$500).

20 A civil penalty recovered under this subsection shall be deposited in
 21 the consumer protection division telephone solicitation fund
 22 established by IC 24-4.7-3-6 to be used for the administration and
 23 enforcement of section 3(a)(19) of this chapter.

24 (i) An elderly person relying upon an uncured or incurable
 25 deceptive act, including an act related to hypnotism, may bring an
 26 action to recover treble damages, if appropriate.

27 (j) An offer to cure is:

28 (1) not admissible as evidence in a proceeding initiated under this
 29 section unless the offer to cure is delivered by a supplier to the
 30 consumer or a representative of the consumer before the supplier
 31 files the supplier's initial response to a complaint; and

32 (2) only admissible as evidence in a proceeding initiated under
 33 this section to prove that a supplier is not liable for attorney's fees
 34 under subsection (k).

35 If the offer to cure is timely delivered by the supplier, the supplier may
 36 submit the offer to cure as evidence to prove in the proceeding in
 37 accordance with the Indiana Rules of Trial Procedure that the supplier
 38 made an offer to cure.

(k) A supplier may not be held liable for the attorney's fees and court costs of the consumer that are incurred following the timely delivery of an offer to cure as described in subsection (j) unless the actual damages awarded, not including attorney's fees and costs, exceed the value of the offer to cure.

(l) The following apply to a deceptive act described in section 3(h) of this chapter:

(1) A person aggrieved by an uncured or incurable deceptive act described in section 3(h) of this chapter may bring an action under subsection (a) for the damages actually suffered as a consumer as a result of the deceptive act. The court may increase damages for a willful deceptive act in an amount that does not exceed three (3) times the actual damages of the consumer suffering the loss.

(2) For a violation of an injunction issued under subsection (c), a civil penalty of not more than thirty thousand dollars (\$30,000) may be imposed under subsection (f).

(3) If a court finds any person has knowingly violated section 3(h) of this chapter, the attorney general, in an action under subsection (c), may recover from the person on behalf of the state a civil penalty of a fine not exceeding ten thousand dollars (\$10,000) per violation. A civil penalty recovered under this subdivision shall be deposited in the homeowner protection unit account established by IC 4-6-12-9.

SECTION 35. IC 24-5-0.5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. **(a) Except as provided in subsection (b),** a person who commits an incurable deceptive act is subject to a civil penalty of a fine of not more than five hundred dollars (\$500) for each violation. The attorney general, acting in the name of the state, has the exclusive right to petition for recovery of such a fine, and this fine may be recovered only in an action brought under section 4(c) of this chapter.

(b) A person who commits an incurable deceptive act described in section 3(h) of this chapter is subject to a civil penalty of a fine of not more than one thousand dollars (\$1,000) for each violation. The attorney general, acting in the name of the state, has the exclusive right to petition for recovery of the fine, and the fine may be recovered only in an action brought under section 4(c) of this

1 **chapter.**

2 SECTION 36.IC 24-9-3-1.1 IS ADDED TO THE INDIANA CODE
3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
4 1, 2008]: **Sec. 1.1. (a) For purposes of this section, a creditor**
5 **conducts a "reasonable inquiry" concerning a borrower's ability**
6 **to repay a loan if the creditor:**

7 (1) obtains a consumer report (as defined in IC 24-5-24-2) or
8 other information maintained by a consumer reporting
9 agency (as defined in IC 24-5-24-3) with respect to the
10 prospective borrower; and

11 (2) obtains information about the prospective borrower
12 through:

13 (A) a current or past employer of the prospective
14 borrower;

15 (B) public records; or

16 (C) any other legal or commercially reasonable means.

17 (b) As used in this section, "stated income or no documentation
18 loan" means a home loan with respect to which a creditor:

19 (1) relies solely on a prospective borrower's written or oral
20 statement of the prospective borrower's creditworthiness; and

21 (2) does not independently verify the accuracy of the
22 prospective borrower's statement by conducting a reasonable
23 inquiry into the prospective borrower's creditworthiness;

24 in making an underwriting determination with respect to the
25 prospective borrower.

26 (c) A creditor may not do either of the following:

27 (1) Recommend or issue a stated income or no documentation
28 loan to a prospective borrower.

29 (2) Recommend or issue a home loan to a prospective
30 borrower without first conducting a reasonable inquiry
31 concerning the prospective borrower's ability to repay the
32 home loan. A creditor, or any officer, agent, or employee of a
33 creditor, that conducts a reasonable inquiry under this section
34 is not liable to:

35 (A) a borrower or prospective borrower;

36 (B) a subsequent purchaser of a home that was the subject
37 of a home loan on which a borrower has defaulted; or

38 (C) any other person;

1 **if a borrower later defaults on a home loan issued by the**
 2 **creditor.**

3 SECTION 37. IC 24-9-3-6 IS AMENDED TO READ AS
 4 FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 6. (a) A creditor
 5 may not charge a fee for informing or transmitting to a person the
 6 balance due to pay off a home loan or to provide a written release upon
 7 prepayment. A creditor must provide a payoff balance not later than ten
 8 (10) ~~business calendar~~ days after the request is received by the
 9 creditor. ~~(b)~~ For purposes of this ~~section~~, **subsection**, "fee" does not
 10 include actual charges incurred by a creditor for express or priority
 11 delivery ~~requested by the borrower~~ of home loan documents to the
 12 borrower **if such delivery is requested by the borrower.**

13 **(b) This subsection applies to a home loan with respect to which**
 14 **any installment or minimum payment due is delinquent for at least**
 15 **ten (10) days. The creditor, servicer, or the creditor's agent shall**
 16 **acknowledge a written offer made in connection with a proposed**
 17 **short sale not later than ten (10) business days after the date of the**
 18 **offer if the offer complies with the requirements for a qualified**
 19 **written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor,**
 20 **servicer, or creditor's agent is required to acknowledge a written**
 21 **offer made in connection with a proposed short sale from a third**
 22 **party acting on behalf of the debtor only if the debtor has provided**
 23 **written authorization for the creditor, servicer, or creditor's agent**
 24 **to do so. Not later than twenty (20) business days after receipt of**
 25 **an offer under this subsection, the creditor, servicer, or creditor's**
 26 **agent shall respond to the offer with an acceptance or a rejection**
 27 **of the offer. As used in this subsection, "short sale" means a**
 28 **transaction in which the property that is the subject of a home loan**
 29 **is sold for an amount that is less than the amount of the borrower's**
 30 **outstanding obligation on the home loan. A creditor, a servicer, or**
 31 **a creditor's agent that fails to respond to an offer within the time**
 32 **prescribed by this subsection is liable:**

33 **(1) under the terms set forth in IC 24-4.5-3-209(3), as if the**
 34 **creditor, servicer, or agent had failed to provide a consumer**
 35 **loan payoff amount; and**

36 **(2) in accordance with 12 U.S.C. 2605(f) in any action brought**
 37 **under that section.**

38 SECTION 38. IC 24-9-4-8 IS AMENDED TO READ AS

FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. (a) A creditor may not make a high cost home loan without regard to repayment ability.

(b) If a creditor presents evidence that the creditor:

(1) followed commercially reasonable practices in determining the borrower's debt to income ratio; **and**

(2) **conducted a reasonable inquiry concerning the borrower's ability to repay the high cost home loan under IC 24-9-3-1.1;** there is a rebuttable presumption that the creditor made the high cost home loan with due regard to repayment ability. ~~For purposes of this section, there is a rebuttable presumption that the borrower's statement of income provided to the creditor is true and complete.~~

(c) **For purposes of subsection (b)(1),** commercially reasonable practices include the use of:

(1) the debt to income ratio:

(A) listed in 38 CFR 36.4337(c)(1); and

(B) defined in 38 CFR 36.4337(d); and

(2) the residual income guidelines established under:

(A) 38 CFR 36.4337(e); and

(B) United States Department of Veterans Affairs form 26-6393.

SECTION 39. IC 24-9-4.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

Chapter 4.5. Residential Real Estate Closings

Sec. 1. This chapter applies to a home loan closing that takes place after June 30, 2008.

Sec. 2. As used in this chapter, "closing documents" refers to the documents that a settlement service provider is required to provide to a borrower at or before the closing of a home loan, in accordance with the requirements of the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) as amended.

Sec. 3. (a) As used in this chapter, "settlement service provider" means a person that provides services in connection with the closing of a real estate transaction, including the provision of title examinations or title insurance.

(b) The term includes a closing agent (as defined in IC 6-1.1-12-43(a)(2)).

Sec. 4. A creditor shall provide a prospective borrower with a

1 notice that states that the prospective borrower has a right to
2 receive, at least forty-eight (48) hours before the closing of a home
3 loan, the closing documents with respect to the home loan. The
4 creditor shall provide the notice required by this section at the
5 same time that the creditor provides the good faith estimates
6 required under the federal Real Estate Settlement Procedures Act
7 (12 U.S.C. 2601 et seq.) as amended.

8 Sec. 5. (a) Subject to subsections (b) and (c), not later than
9 forty-eight (48) hours before the closing of a home loan, a
10 settlement service provider shall make available to the borrower
11 the closing documents with respect to the home loan. The
12 settlement service provider shall make the closing documents
13 available to the borrower:

- 14 (1) at the office of the creditor or the settlement service
15 provider;
- 16 (2) through the United States mail;
- 17 (3) by facsimile; or
- 18 (4) through any other commercially reasonable means.

19 (b) A settlement service provider's duty to make closing
20 documents available to a borrower within the time set forth in
21 subsection (a) applies only to the extent that the settlement service
22 provider is able to obtain the closing documents from the creditor
23 making the home loan. However, a settlement service provider is
24 not relieved of the settlement service provider's duty under
25 subsection (a) unless the settlement service provider first makes a
26 good faith effort to obtain the closing documents from the creditor
27 so as to allow the settlement service provider to in turn provide the
28 documents to the borrower within the time set forth in subsection
29 (a). If, after a good faith effort by the settlement service provider
30 to obtain the closing documents from the creditor as required
31 under this subsection, the creditor provides a set of closing
32 documents that is not complete, the settlement service provider
33 shall provide written notice to the borrower of that fact at the same
34 time that the settlement service provider makes the closing
35 documents available to the borrower under subsection (a).

36 (c) A borrower may waive the right to receive the closing
37 documents with respect to a home loan by providing a written
38 notice of waiver to the settlement service provider at or before the

1 time of closing.

2 (d) If the borrower does not receive the closing documents for
3 a home loan within the time set forth in subsection (a), the
4 borrower is entitled to delay or reschedule the closing without
5 penalty and without forfeiting the right to enter into the loan or, in
6 the case of a purchase money home loan, into the purchase
7 contract.

8 (e) If the terms of the home loan set forth in the closing
9 documents made available to the borrower under subsection (a)
10 differ from the terms of the home loan presented to the borrower
11 at the time of the closing, the borrower is entitled to delay or
12 reschedule the closing without penalty and without forfeiting the
13 right to enter into the loan or, in the case of a purchase money
14 home loan, into the purchase contract. For purposes of this
15 subsection, "terms", with respect to a home loan, include any of the
16 following:

- 17 (1) The total loan amount.
- 18 (2) The loan's rate, including the trigger rate.
- 19 (3) Points and fees.
- 20 (4) Payment amounts and schedules.
- 21 (5) The term or duration of the loan.
- 22 (6) Prepayment penalties, if any.
- 23 (7) Acceleration provisions.
- 24 (8) Servicing of the loan.
- 25 (9) Other provisions concerning the rights and responsibilities
26 of the parties to the home loan.

27 Sec. 6. (a) A settlement service provider is subject to a civil
28 penalty of twenty-five dollars (\$25) for each instance in which the
29 settlement service provider fails to make closing documents
30 available to a borrower as required by section 5 of this chapter,
31 unless:

- 32 (1) the creditor making the home loan fails to provide the
33 closing documents despite the settlement service provider's
34 good faith efforts to obtain the closing documents, as required
35 under section 5(b) of this chapter; or
- 36 (2) the borrower has waived the borrower's right to receive
37 the closing documents under section 5(c) of this chapter.
- 38 (b) A penalty described in subsection (a):

1 **(1) may be enforced by the state agency that has**
 2 **administrative jurisdiction over the settlement service**
 3 **provider in the same manner that the agency enforces the**
 4 **payment of fees or other penalties payable to the agency; and**
 5 **(2) shall be paid into the property tax replacement fund.**

6 **(c) A settlement service provider is not liable for any other**
 7 **damages claimed by a customer because of the settlement service**
 8 **provider's failure to comply with this chapter.**

9 SECTION 40. IC 24-9-5-4, AS AMENDED BY P.L.3-2005,
 10 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 11 JULY 1, 2008]: Sec. 4. (a) A person who violates this article is liable
 12 to a person who is a party to the home loan transaction that gave rise to
 13 the violation for the following:

14 (1) Actual damages, including consequential damages. A person
 15 is not required to demonstrate reliance in order to receive actual
 16 damages.

17 (2) Statutory damages equal to ~~two (2)~~ **four (4)** times the finance
 18 charges agreed to in the home loan agreement.

19 (3) Costs and reasonable attorney's fees.

20 (b) A person may be granted injunctive, declaratory, and other
 21 equitable relief as the court determines appropriate in an action to
 22 enforce compliance with this chapter.

23 (c) The right of rescission granted under 15 U.S.C. 1601 et seq. for
 24 a violation of the federal Truth in Lending Act (15 U.S.C. 1601 et seq.)
 25 is available to a person acting only in an individual capacity by way of
 26 recoupment as a defense against a party foreclosing on a home loan at
 27 any time during the term of the loan. Any recoupment claim asserted
 28 under this provision is limited to the amount required to reduce or
 29 extinguish the person's liability under the home loan plus amounts
 30 required to recover costs, including reasonable attorney's fees. This
 31 article shall not be construed to limit the recoupment rights available
 32 to a person under any other law.

33 (d) The remedies provided in this section are cumulative but are not
 34 intended to be the exclusive remedies available to a person. Except as
 35 provided in subsection (e), a person is not required to exhaust any
 36 administrative remedies under this article or under any other applicable
 37 law.

38 (e) Before bringing an action regarding an alleged deceptive act

1 under this chapter, a person must:

- 2 (1) notify the homeowner protection unit established by
 3 IC 4-6-12-2 of the alleged violation giving rise to the action; and
 4 (2) allow the homeowner protection unit at least ninety (90) days
 5 to institute appropriate administrative and civil action to redress
 6 a violation.

7 (f) An action under this chapter must be brought within five (5)
 8 years after the date that the person knew, or by the exercise of
 9 reasonable diligence should have known, of the violation of this article.

10 (g) An award of damages under subsection (a) has priority over a
 11 civil penalty imposed under this article.

12 SECTION 41. IC 24-9-8-1 IS AMENDED TO READ AS
 13 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. A person who
 14 knowingly or intentionally violates this article commits:

- 15 (1) a Class ~~A misdemeanor~~; **D felony**; and
 16 (2) an act that is actionable by the attorney general under
 17 IC 24-5-0.5 and is subject to the penalties listed in IC 24-5-0.5.

18 SECTION 42. IC 24-9-8-3 IS AMENDED TO READ AS
 19 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) The attorney
 20 general may bring an action to enjoin a violation of this article. A court
 21 in which the action is brought may:

- 22 (1) issue an injunction;
 23 (2) order a person to make restitution;
 24 (3) order a person to reimburse the state for reasonable costs of
 25 the attorney general's investigation and prosecution of the
 26 violation of this article; and
 27 (4) impose a civil penalty of not more than ~~ten~~ **twenty** thousand
 28 dollars ~~(\$10,000)~~ **(\$20,000)** per violation.

29 (b) A person who violates an injunction under this section is subject
 30 to a civil penalty of not more than ~~ten~~ **twenty** thousand dollars
 31 ~~(\$10,000)~~ **(\$20,000)** per violation.

32 (c) The court that issues an injunction retains jurisdiction over a
 33 proceeding seeking the imposition of a civil penalty under this section.

34 SECTION 43. IC 25-34.1-8-10 IS AMENDED TO READ AS
 35 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 10. (a) To be licensed
 36 or certified as a real estate appraiser, an individual must meet the
 37 following conditions:

- 38 (1) Not have a conviction for any of the following:

- 1 (A) An act that would constitute a ground for disciplinary
2 sanction under IC 25-1-11.
- 3 (B) A crime that has a direct bearing on the individual's ability
4 to practice competently.
- 5 (C) Fraud or material deception in the course of professional
6 services or activities.
- 7 (D) A crime that indicates the individual has the propensity to
8 endanger the public.
- 9 (2) Have satisfied the requirements established under
10 IC 25-34.1-3-8(f).
- 11 **(b) After June 30, 2008, the board shall require each applicant**
12 **for initial licensure or certification under this chapter to submit**
13 **fingerprints for a national criminal history background check (as**
14 **defined in IC 10-13-3-12) by the Federal Bureau of Investigation,**
15 **for use by the board in determining whether the applicant should**
16 **be denied licensure or certification under this chapter for any**
17 **reason set forth in subsection (a)(1). The applicant shall pay any**
18 **fees or costs associated with the fingerprints and background check**
19 **required under this subsection. The board may not release the**
20 **results of a background check described in this subsection to any**
21 **private entity.**
- 22 **(c) The board may request evidence of compliance with this**
23 **section in accordance with subsection (d). Evidence of compliance**
24 **with this section may include any of the following:**
- 25 **(1) Subject to subsections (b) and (d)(2), criminal background**
26 **checks, including a national criminal history background**
27 **check (as defined in IC 10-13-3-12) by the Federal Bureau of**
28 **Investigation.**
- 29 **(2) Credit histories.**
- 30 **(3) Other background checks considered necessary by the**
31 **board.**
- 32 **(d) The board may request evidence of compliance with this**
33 **section at any of the following times:**
- 34 **(1) The time of application for an initial license or certificate.**
35 **(2) The time of renewal of a license or certificate.**
36 **(3) Any other time considered necessary by the board.**
- 37 **(e) The commission, upon recommendation of the board, shall**
38 **adopt rules under IC 4-22-2 to implement this section.**

SECTION 44. IC 27-7-3-15.5 IS ADDED TO THE INDIANA
CODE AS A NEW SECTION TO READ AS FOLLOWS
[EFFECTIVE UPON PASSAGE]: **Sec. 15.5. (a) This section applies**

to a transaction that:

(1) is a single family residential:

(A) first lien purchase money mortgage transaction; or

(B) refinancing transaction; and

(2) is closed after December 31, 2009.

(b) Not later than September 1, 2009, the department shall establish and maintain an electronic system for the collection and storage of the following information concerning any of the following persons that have participated in or assisted with a transaction to which this section applies, or that will participate in or assist with a transaction to which this section applies:

(1) The name and license number (under IC 23-2-5) of each loan brokerage business involved in the transaction.

(2) The name and registration number (under IC 23-2-5) of each originator involved in the transaction.

(3) The name and license number (under IC 25-34.1) of each:

(A) principal broker; and

(B) salesperson or broker-salesperson, if any; involved in the transaction.

(4) The name and certificate number (under this chapter) of each title insurance company involved in the transaction.

(5) The name and license number (under IC 27-1-15.6) of each title insurance agent involved in the transaction.

(6) The name and:

(A) license or certificate number (under IC 25-34.1-3-8) of each licensed or certified real estate appraiser; or

(B) license number (under IC 25-34.1) of each broker; who appraises the property that is the subject of the transaction.

(7) The name of the mortgagee and, if the mortgagee is required to be licensed under IC 24-4.5-3-502, the license number of the mortgagee.

(c) The system established by the department under this section must include a form that:

(1) is uniformly accessible in an electronic format to the

1 closing agent (as defined in IC 6-1.1-12-43(a)(2)) in the
2 transaction; and

3 (2) allows the closing agent to:

4 (A) input the information described in subsection (b) with
5 respect to each person described in subsection (b) that
6 participates in or assists with the transaction, to the extent
7 determinable; and

8 (B) submit the form electronically to a data base
9 maintained by the department.

10 (d) Subject to subsection (e), the department shall make the
11 information stored in the data base described in subsection
12 (c)(2)(B) accessible to:

13 (1) each entity described in IC 4-6-12-4; and

14 (2) the homeowner protection unit established under
15 IC 4-6-12-2.

16 (e) The department, a closing agent who submits a form under
17 subsection (c), each entity described in IC 4-6-12-4, and the
18 homeowner protection unit established under IC 4-6-12-2 shall
19 exercise all necessary caution to avoid disclosure of any
20 information:

21 (1) concerning a person described in subsection (b), including
22 the person's license, registration, or certificate number; and

23 (2) contained in the data base described in subsection
24 (c)(2)(B);

25 except to the extent required or authorized by state or federal law.

26 SECTION 45. IC 34-30-2-96.7 IS ADDED TO THE INDIANA
27 CODE AS A NEW SECTION TO READ AS FOLLOWS
28 [EFFECTIVE JULY 1, 2008]: Sec. 96.7. IC 24-9-3-1.1 (Concerning
29 a creditor's reasonable inquiry concerning a prospective
30 borrower's ability to repay a home loan.)

31 SECTION 46. [EFFECTIVE UPON PASSAGE] (a) As used in this
32 SECTION, "task force" refers to the mortgage lending and fraud
33 prevention task force created under subsection (b).

34 (b) Not later than May 1, 2008, the following agencies shall
35 create the mortgage lending and fraud prevention task force by
36 each appointing an equal number of representatives to serve on the
37 task force:

38 (1) The securities division of the office of the secretary of state

- 1 established under IC 23-19-6-1(a).
- 2 (2) The homeowner protection unit established by the
- 3 attorney general under IC 4-6-12-2.
- 4 (3) The department of financial institutions established by
- 5 IC 28-11-1-1.
- 6 (4) The department of insurance created by IC 27-1-1-1.
- 7 (5) The Indiana real estate commission created by
- 8 IC 25-34.1-2-1.
- 9 (6) The real estate appraiser licensure and certification board
- 10 created by IC 25-34.1-8-1.
- 11 (c) The members of the task force shall annually appoint a chair
- 12 from among the members of the task force. Each year, the chair
- 13 shall rotate among the agencies set forth in subsection (b).
- 14 (d) Subject to subsection (e), beginning not later than July 2008,
- 15 the task force shall meet each month to:
- 16 (1) coordinate the state's efforts to:
 - 17 (A) regulate the various participants involved in
 - 18 originating, issuing, and closing home loans;
 - 19 (B) enforce state laws and rules concerning mortgage
 - 20 lending practices and mortgage fraud; and
 - 21 (C) prevent fraudulent practices in the home loan industry
 - 22 and investigate and prosecute cases involving mortgage
 - 23 fraud; and
- 24 (2) share information and resources necessary for the efficient
- 25 administration of the tasks set forth in subdivision (1).
- 26 (e) With respect to any meeting of the task force:
 - 27 (1) one (1) or more members of the task force may participate
 - 28 in the meeting; or
 - 29 (2) the meeting may be conducted in its entirety;
- 30 by means of a conference telephone or similar communications
- 31 equipment by which all persons participating in the meeting can
- 32 communicate with each other. Participation by the means
- 33 described in this subsection constitutes presence in person at the
- 34 meeting.
- 35 (f) Beginning in 2008, not later than November 1 of each year,
- 36 the task force shall report to the legislative council on the activities
- 37 of the task force during the most recent state fiscal year. The
- 38 report required under this subsection must include:

1 **(1) information on the regulatory activities of each agency**
 2 **described in subsection (b), including a description of any:**

3 **(A) investigations conducted; or**

4 **(B) disciplinary actions taken or criminal prosecutions**
 5 **pursued;**

6 **with respect to the professions involved in originating, issuing,**
 7 **and closing home loans;**

8 **(2) a description of any challenges:**

9 **(A) encountered by the task force during the most recent**
 10 **state fiscal year; or**

11 **(B) anticipated by the task force in the current state fiscal**
 12 **year;**

13 **in carrying out the duties set forth in subsection (d);**

14 **(3) any additional information required by the legislative**
 15 **council; and**

16 **(4) any recommendations by the task force for legislation**
 17 **necessary to assist the task force in carrying out the duties set**
 18 **forth in subsection (d).**

19 **A report to the legislative council under this subsection must be in**
 20 **an electronic format under IC 5-14-6.**

21 **SECTION 47. [EFFECTIVE UPON PASSAGE] (a) As used in this**
 22 **SECTION, "authority" refers to the Indiana housing and**
 23 **community development authority created by IC 5-20-1-3.**

24 **(b) As used in this SECTION, "mortgage transaction" refers to**
 25 **a first lien mortgage transaction (as defined in IC 24-4.4-1-301(6)).**

26 **(c) Not later than November 1, 2008, the authority shall provide**
 27 **a report to the legislative council that includes the following:**

28 **(1) An identification of:**

29 **(A) new sources of funding that can be used to assist**
 30 **Indiana homeowners in refinancing their existing**
 31 **mortgage transactions; or**

32 **(B) existing sources of funding that can be directed or**
 33 **redirected to assist Indiana homeowners in refinancing**
 34 **their existing mortgage transactions;**

35 **in order to prevent the foreclosure of the homes secured by**
 36 **homeowners' existing mortgage transactions.**

37 **(2) A plan for the rehabilitation of neighborhoods or**
 38 **communities in Indiana that have been adversely or**

1 disproportionately affected by mortgage foreclosures. The
2 plan required by this subdivision must include an
3 identification of the following:

4 (A) The areas in Indiana that have been adversely or
5 disproportionately affected by mortgage foreclosures,
6 including any statistics or data used to identify the areas.

7 (B) New or existing sources of funding that can be directed
8 or redirected to the proposed rehabilitation efforts.

9 (3) Any recommendations for legislation that the authority
10 determines is needed to accomplish the objectives described
11 in subdivisions (1) and (2).

12 (4) Any other recommendations of the authority concerning:

13 (A) the prevention of mortgage foreclosures; or

14 (B) the rehabilitation of neighborhoods or communities
15 adversely or disproportionately affected by mortgage
16 foreclosures.

17 (d) The report to the legislative council required by this
18 SECTION must be in an electronic format under IC 5-14-6.

19 (e) This SECTION expires January 1, 2010.

20 SECTION 48. [EFFECTIVE UPON PASSAGE] (a) As used in this
21 SECTION, "commissioner" refers to the securities commissioner
22 appointed under IC 23-19-6-1.

23 (b) As used in this SECTION, "director" refers to the director
24 of the department of financial institutions appointed under
25 IC 28-11-2-1.

26 (c) The commissioner and the director shall cooperate to
27 determine the appropriate state agency or department to oversee
28 the regulation of a person that is, has been, or may be subject to
29 regulation, licensure, or registration under both:

30 (1) IC 23-2-5; and

31 (2) IC 24-4.5, as amended by this act.

32 (d) The commissioner and the director shall issue joint
33 guidelines to address the appropriate regulation of a person
34 described in subsection (c) not later than September 1, 2008. The
35 joint guidelines issued under this subsection must include any
36 recommendations for legislation needed to implement the
37 appropriate regulation of a person described in subsection (c), as
38 determined by the commissioner and the director.

1 **(e) This SECTION expires January 1, 2010.**
2 SECTION 49. [EFFECTIVE UPON PASSAGE] **(a) As used in this**
3 **SECTION, "board" refers to the real estate appraiser licensure**
4 **and certification board created by IC 25-34.1-8-1.**
5 **(b) As used in this SECTION, "commission" refers to the**
6 **Indiana real estate commission created by IC 25-34.1-2-1.**
7 **(c) Notwithstanding IC 25-34.1-8-10(e), as added by this act, the**
8 **commission shall adopt rules to implement IC 25-34.1-8-10, as**
9 **amended by this act, in the same manner as emergency rules are**
10 **adopted under IC 4-22-2-37.1. Not later than May 1, 2008, the**
11 **board shall make recommendations to the commission concerning**
12 **the rules needed to implement IC 25-34.1-8-10, as amended by this**
13 **act. The commission shall adopt any emergency rules under this**
14 **SECTION not later than June 1, 2008. An emergency rule adopted**
15 **under this SECTION:**
16 **(1) takes effect on July 1, 2008; and**
17 **(2) expires on the earlier of:**
18 **(A) the date the rule is adopted by the commission under**
19 **IC 4-22-2-24 through IC 4-22-2-36; or**
20 **(B) January 1, 2010.**
21 **(d) This SECTION expires January 1, 2010.**
22 SECTION 50. **An emergency is declared for this act."**
23 Renumber all SECTIONS consecutively.
 (Reference is to SB 89 as reprinted January 23, 2008.)

and when so amended that said bill do pass.

Representative Bardon